

Q. In other words, the persons you have named were associated with Cary T. Hutchinson for the purpose of developing a hydroelectric project on the Susquehanna River? A. That is my understanding of it.

Q. Was H. F. Dimock, Hutchinson's father-in-law? A. Yes, sir.

[6622] Q. What positions had Hutchinson held, or what activities had he engaged in, with the York Furnace partnership? A. Cary T. Hutchinson had been retained to supply advice to the partners on the possibility of using electricity in connection with the reduction of iron ore in the vicinity of York Furnace.

[6625] Q. What was the York Furnace Power Company? A. The York Furnace Power Company?

Q. Was it a partnership? A. Yes, sir, it was a partnership.

Q. Who were the members of the partnership? A. Beyer and Willson, a man by the name of Shoff, and two others formed the co-partnership. I don't know who the [6626] two others were.

Q. Holman and Franklin? A. I really don't know. But those two names sound familiar.

Q. I show you this document. A. Yes; that is correct, John W. Holman.

Q. The document which I just showed you to refresh your recollection, Mr. Gunn, was an agreement dated February 21, 1902, between the members of the partnership and Cary T. Hutchinson. Is that right? A. Yes, sir.

Q. Had you ever seen this document before? A. I don't recall. I looked at a vast number of documents. I may have or I may have not. I assume that I did.

Q. Is it a fact that Holman, Shoff and Franklin dropped out of the partnership leaving Beyer and Willson as the sole partners?

THE WITNESS: May I have the question, please?

(Question read).

THE WITNESS: It is my understanding Beyer and Willson wound up with the partnership as the sole members.

. . .

[6628] Q. What was York Furnace Power Company's connection with Hutchinson? A. I think it varied from time to time. His first connection, as I recall it, was when York Furnace Power Company employed Hutchinson as an engineer and consultant in connection with the reduction of iron ore in the locality of York Furnace through the use of electricity. Then, as I understand it later, after Beyer and Willson had taken over the interest of the other parties in the York Furnace partnership, Hutchinson bought from them an option to buy York Furnace property, and then subsequent to that it is my understanding that at least Beyer—I don't recall what became of Willson—became counsel for Hutchinson on local land matters, and in effect Hutchinson's agent in the securing of further water power rights necessary to the Hutchinson development at McCall Ferry.

[6629] I believe after the formation of McCall Ferry Power Company, Beyer was local counsel for McCall Ferry Power Company.

Q. Didn't Willson also carry on activities for Cary T. Hutchinson, such as acquisition of property, and so forth?

TRIAL EXAMINER: Can you answer the question without looking something up?

THE WITNESS: I don't recall offhand. I was just looking at Exhibit 26 to refresh my memory.

It appears Willson did continue his interest in McCall Ferry Power Company, as shown on page 40 of Exhibit 26.

By MR. HALL:

Q. It is a fact, is it not, that York Furnace Power Company had acquired properties along the Susquehanna River for the purpose of developing a hydroelectric project

in connection with its business or proposed business? A. Yes, sir.

Q. Will you turn to the map at the back of Exhibit 26 which purports to show land acquisitions by three groups, the first of which is listed as Hutchinson properties, the second as McGaw properties, and the third, McCall Ferry Power Company acquisitions? A. Yes, sir, I have that before me.

Q. The buff-colored portions include lands owned at one [6630] time by York Furnace Power Company. Is that right? A. Yes, sir, the holdings of York Furnace Power Company are included in that buff-colored section, although the buff-colored sections are not limited to the holdings of York Furnace Power Company.

[6640] By MR. HALL:

Q. I believe you have indicated Mr. Beyer acted in Hutchinson's behalf in purchasing the land along the Susquehanna River for the Holtwood development? A. Yes, I believe he did.

Q. Did he not also act in the same capacity for McCall Ferry Power Company after its organization? [6641] A. Yes, I believe so. I think he was also counsel for McCall Ferry Power Company.

Q. Is it a fair statement to say that as a result of Beyer's business activities in connection with York Furnace Power Company and its acquisition of lands for power development that he was familiar with property acquisitions along the river and power properties? A. Will you read that one, please?

(Question read.)

THE WITNESS: Yes, I think that is a fair assumption.

By MR. HALL:

Q. As a result of his knowledge, don't you think it also fair to say he was acquainted with the value of such prop-

erties and with the prices that were being paid therefor?

A. I will have to have that read back.

(Question read.)

MR. KING: Who is "he"?

MR. HALL: Mr. Beyer.

THE WITNESS: He was unquestionably familiar with the prices he was paying for the property. I don't know whether his knowledge would extend to the other parts of your question or not.

By MR. HALL:

Q. He was also familiar with the value of such properties, wasn't he? [6642] A. I really don't know whether or not he was.

Q. It is reasonable to assume he was. Isn't that so? A. I don't know.

Q. He was actively engaged in the acquisition of properties along the river, wasn't he? A. After he began to represent McCall Ferry Power Company he was buying them under Hutchinson's supervision. Which one had the knowledge as to the value of the property I don't know. Beyer was a lawyer and Hutchinson was an engineer. Hutchinson was the man who had knowledge of the use to which the properties would be put.

Q. What do you mean when you say Beyer was acquiring land under Hutchinson's supervision? A. I thought after Hutchinson took the option on the York Furnace, to buy the York Furnace properties from Beyer, whatever Beyer was doing after that it was as Hutchinson's agent.

Q. Beyer acquired certain properties for the York Furnace Power Company. Is that right? A. You mean prior to the time he gave the option to Hutchinson?

Q. Yes. A. That was not a conspicuously successful enterprise.

Q. He was fully aware of the prices and values and so forth in so far as acquisition of lands was concerned. Isn't

[6643] that so? A. He was aware of the prices he paid. I don't know whether or not he was aware of anything else.

Q. Don't you think it reasonable to assume that Beyer, when he paid for the land which he acquired, was aware of the values of those lands? A. Are you referring in that question to when he was buying them for York Furnace Power Company or for Hutchinson?

Q. Both. A. No, I don't know whether or not he was aware of the value.

Q. He was acquiring some of the properties in contemplation of constructing a hydroelectric project for his partnership, York Furnace Power Company, wasn't he? A. Yes, sir. As I said it was not a conspicuously successful enterprise.

Q. Had York Furnace Power Company constructed projects? A. No.

Q. Then what was not a successful enterprise? A. The acquisitions of water power rights for the purpose of building what York Furnace contemplated as a project.

Q. Why do you say that, Mr. Gunn? A. Because it was not built.

Q. Do you know why it wasn't built? A. No, I really don't. There were several factors [6644] which might have contributed to it. In the first place the advice Hutchinson gave Beyer and Willson concerning the reduction of iron ore as I recall was that it was not a feasible proposition. The next thing I know Beyer and Willson had sold an option to Hutchinson to buy the properties. Now, that is about all I know about it.

. . .

[6645] Q. Mr. Gunn, I show you a photostatic copy of a document which in the first two paragraphs reads "This agreement made this 21st day of February, 1902, between John W. Holman and Frederick Shoff, George B. Willson and William F. Beyer, all of the county of Lancaster and state of Pennsylvania, parties of the first part, and Dr. Cary T. Hutchinson of the city of New York, party of the second part, witnesseth:"

Do you recognize this document? A. Yes, sir. I believe I have seen it before. It seems to be Hutchinson's first option on the property.

Q. That is my understanding of this document, Mr. Gunn. Doesn't it refer on the first page to Hutchinson's proposed development? A. Yes, sir, but that is not the question you just asked me.

. . .

Q. If, according to this document which is Hutchinson's original option on the York Furnace Power Company properties, that is the portion covered by his original option, that the land [6646] is being acquired for the purpose of damming the river, then Beyer and Willson knew that he was acquiring the property covered by this option for the purpose of the Holtwood dam. Isn't that so? A. Well, they certainly knew that he was buying the property for the purpose of the hydroelectric development. Whether they knew the scope of the project Hutchinson had in mind for McCall Ferry Power Company at the McCall site is extremely doubtful because Hutchinson himself didn't know. I think that is obvious. As a matter of fact, if you recall from the history of McCall Ferry Power Company they financed for a dam to elevation 155 and they renegotiated an arrangement with Pennsylvania Railroad and raised the elevation to 185, and then the railroad negotiation fell through and they reduced it back to 165. So it was not until 1907 that anybody knew the scope of the project that was going to be built at McCall Ferry site.

. . .

[6647] Q. Who were the incorporators of the Hillside Water and Power Company? A. Jacob Hill Byrne, W. F. Jack, George B. Willson, Walter M. Franklin, and W. F. Beyer. They were the nominal incorporators, I guess you would call them. At least they were the first ones.

Q. They were the dummy incorporators, in other words? A. I think that is probably what you would call them.

Q. Were they also the incorporators of Susquehanna Water and Power Company? A. Yes, sir.

Q. In forming Hillside and Susquehanna were the incorporators acting in their own behalf or in behalf of Hutchinson? [6648] A. I would say they were acting in behalf of Hutchinson.

Q. Who were the incorporators of McCall Ferry Power Company? A. May I have the question?

(Question read.)

THE WITNESS: The dummy incorporators, if we may call it that, were the same five individuals.

By MR. HALL:

Q. In whose behalf were they acting at the time they formed the McCall Ferry Power Company? A. I think they were acting in behalf of the Hutchinson interest and the bankers.

Q. What was the capitalization of McCall Ferry at the outset? A. One thousand dollars.

Q. Ten shares? A. Ten shares of \$100 each.

Q. Was McCall Ferry Power Company incorporated on April 14, 1905? A. That is a rather difficult question. The merger of the Hillside Water and Power Company and the Susquehanna Water and Power Company was executed on April 1, 1905, and the formal documents issued by the Secretary of State of Pennsylvania, I believe, were dated April 14. I don't know which one of those actually effects the incorporation.

[6649] Q. Who held the ten original shares, Mr. Gunn? A. The incorporators, as I understand it.

Q. Who received the ten shares from the incorporators? A. Who received them when? You mean ultimately?

Q. When the incorporators disposed of the ten shares, who got them? A. They ultimately went four shares to Hutchinson and six to Harvey Fisk and Sons.

Q. When you say that they ultimately went to Hutchinson and Fisk, were divided between them, when did that

occur? A. I suppose it occurred on June 13, 1905, or thereabouts.

Q. What makes you say that? A. Well, that was the date in which all of the agreements affecting the disposition of the stock and the transfer of the lands took place, and I assume, therefore, that these shares of stock probably were transferred at that time.

Q. I show you a copy of a letter dated June 22, 1905, written by Lorenzo Semple to Cary T. Hutchinson, Esq., No. 60 Wall Street, Manhattan, New York. This copy was copied from a copy contained in Susquehanna Contracting Company's file number 30.

MR. KING: May we see it before you submit it to the witness, please?

MR. HALL: Yes.

[6650] MR. KING: Thank you.

By MR. HALL:

Q. Have you seen that letter before today, Mr. Gunn?

A. I presume I have, or at least had the information contained in it.

Q. When I said the letter was contained in file number 30 of Susquehanna Contracting Company, I believe you will agree that the files of Susquehanna Contracting Company are now in the possession of Penn Water? A. Yes, that is right.

Q. According to the second paragraph of that letter, Mr. Semple states as follows: "I also send you receipt for \$155,500, signed by Beyer, Willson and the Lancaster Trust Company and Franklin and Marshall College. Also Certificates Nos. 1, 2, 3, 4 and 5, each for two shares of the capital stock of the McCall Ferry Power Company endorsed in blank. These represent the \$1,000 in capital stock which you have received from Beyer and Willson."

It is so stated in that letter? A. Yes, sir, the letter so states.

Q. According to this letter, then, the ten shares of stock, that is the incorporators' shares, were delivered to Hutchinson on June 22, 1905? A. I don't know you could necessarily draw that conclusion for this reason. Lorenzo Semple was Hutchinson's [6651] lawyer. It is true that Semple transmitted the shares to Hutchinson on June 22. Now, when they may have come into Lorenzo Semple's hands I don't know from this letter. It evidently was before June 22.

Q. But according to this letter Semple was delivering the incorporators' shares to Hutchinson on June 22, 1905. Isn't that right? A. Yes, sir, the letter so states.

[6652] Q. You don't have any information to indicate to the contrary, do you? A. To the contrary of the proposition that Lorenzo Semple sent the stock to Hutchinson on the 22nd?

Q. Yes. A. No, sir, I do not.

Q. Will you identify Lorenzo Semple for the record? A. Yes, sir. I already did. He was Hutchinson's counsel.

Q. Were the incorporators also the directors of the McCall Ferry Power Company? A. Yes, sir, they were apparently incorporators, directors and stockholders.

Q. Was Beyer president and Willson secretary and treasurer of the McCall Ferry Power Company? A. Yes, sir.

Q. They were the only officers that the company had at the outset? A. Yes, sir, in this stage of the dummy incorporation.

Q. Did Hillside and Susquehanna own any property or have any assets? A. Not that I recall other than whatever they may have acquired with the proceeds of their \$1,000.

Q. Were those two companies active companies? A. No, sir, I don't think they were.

[6653] Q. I believe you have indicated Hutchinson carried on property acquisitions and investigations in his own name with Beyer and Willson's assistance? A. Yes.

Q. You state, Mr. Gunn, in Exhibit 26 at pages 6 and 7; that Hutchinson formed a partnership with one George S. Morison, a consulting engineer, to investigate the possibilities of generating and selling power. Do you have a copy of the partnership arrangement? A. No. If it isn't in Exhibit 27 I don't have it.

Q. As of what date was the partnership formed? A. I don't have that fact. The only thing I know of that partnership is what is included in Hutchinson's affidavit.

Q. You don't know the terms of the partnership arrangement? A. No, sir.

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[6654] Q. How did you determine that a partnership existed? A. Hutchinson stated to me that such a partnership existed, and it is also stated in Hutchinson's affidavit which is Item No. 1 in Exhibit 27.

Q. Does that affidavit constitute your sole basis for your knowledge of the arrangement between Morison and Hutchinson? A. It constitutes, as I recall, my sole knowledge it was a partnership arrangement. It doesn't constitute my sole knowledge they were associated on the river. It constitutes my only knowledge as to the character of the association, as I recall it.

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[6655] By Mr. HALL:

Q. How does this partnership arrangement enter into the complete history that you referred to? A. It is a fact.

Q. Why did you leave out the details? A. Because I didn't think the details were pertinent in the first place, and I doubt if I could have gotten them in the second place.

Q. How do you know that you couldn't have gotten them, Mr. Gunn? A. I don't know I couldn't have gotten them. I just said I doubt if I could get them. Hutchinson told me that practically all of his personal records long ago had been destroyed in connection with the McCall Ferry

project, and he was relying only on his memory. I didn't expect him to remember those details for forty years.

Q. According to the last three lines in paragraph No. 1 [6656] of Exhibit 27 it is stated that Hutchinson "Reviewed and examined pertinent data and records, including the pertinent records and data of McCall Ferry Power Company and thoroughly refreshed his mind and memory in connection therewith."

What documents were used to refresh Hutchinson's mind and memory as to his partnership arrangement with Morison? A. Several of the documents included in Exhibit 27, and all of them were included in the participation which I said was made available to Hutchinson, which is in the company's files, and which are available to the Commission Staff.

Q. Will you refer to Exhibit 27 and indicate the parts thereof that you used to refresh Hutchinson's recollections as to the partnership arrangement? A. I can't remember offhand which ones we supplied to him. They are, however, in the company's files.

Q. Are any of them in Exhibit 27? A. I am sure they are, but I don't recall which ones. Of these participations there were five or six made up, and they all had different numbers and different exhibits which were included now as items in Exhibit 27. I can't recall offhand precisely which exhibits were included in each one of the participations supplied to the people who gave us their recollection on this problem.

[6659] Q. Have you found any evidence of the partnership?

A. I don't recall that I have. I didn't know there was a partnership between Hutchinson and Morison until Hutchinson told me there was.

Q. If that is the case, Mr. Gunn, there are no records that you could have shown Mr. Hutchinson that could have served to refresh his recollection. Isn't that so? [6660]

A. On that part?

Q. Yes. A. Yes, that is true, there are no records I could have shown him.

Q. Or about anything else relating to the partnership?

A. No. As I told you before, I didn't know there was a partnership until Hutchinson told me. As I recall, there certainly was nothing I gave him to refresh his recollection on that.

Q. Did Hutchinson tell you that in his initial conference with you? A. I don't recall in which conference he told me. He told me in one of the early conferences, yes.

Q. How many conferences did you have with him?

A. Seems to me like four, five or six.

Q. Can you fix the date of the earliest conference with Hutchinson? A. I don't have anything before me to fix it. I can refer to the company's records and fix it.

Q. Did you make notes and keep notes as to your conferences? A. What kinds of notes?

Q. As to what took place in the conferences? A. No.

Q. Did you keep any records of the subject matter of [6661] your conferences? A. No, sir. As I said before, Exhibit 26 was in the state of evolution, and as information came to me it was incorporated in Exhibit 26.

Q. Didn't you write that information down for the purpose of incorporating it into Exhibit 26? A. Well, it was written down and became a part of Exhibit 26.

Q. Are you saying that it became a part of Exhibit 26 only after the affidavit was prepared? A. No, I think it became a part of Exhibit 26, or certain parts of it did, as Hutchinson gave them to me.

Q. You wrote Exhibit 26, in other words, and then prepared the affidavit? A. At the time the affidavit was prepared Exhibit 26 certainly was in the process of evolution, as I described to you this morning how it was prepared.

Q. Then the affidavit in effect represented the evolution that you are talking about? A. No, I wouldn't say that.

The affidavit was prepared by Hutchinson's counsel and represented Hutchinson's recollection based upon all of the information I had given to Hutchinson. Now, he had during various conferences before the affidavit was prepared given me most of the information that ultimately went into his [6662] affidavit.

This information about the Morison partnership, as I recall it, was given to me in one of the early conferences.

Q. Did Hutchinson have any personal files not in the possession of Penn Water which covered the period from 1900 through 1910? A. He told me he did not.

Q. Then he relied solely on what you gave him plus his recollection. Is that right? A. I think that is probably true. That is my understanding of it.

Q. Did Hutchinson draw upon your deductions and analysis of the basic records that you supplied to him to refresh his recollection?

MR. KING: May we have that question?

(Question read.)

THE WITNESS: To refresh his recollection when?

By MR. HALL:

Q. When you conferred with him? A. Well, I don't know. There was perfectly free discussion which took place between Doctor Hutchinson and myself, and there were the documents before us. I told him all I knew about them. I don't know what he drew on and what he didn't.

Q. Did you give him any information which was not [6663] contained in the documents which you had in your possession at that time?

THE WITNESS: May I have that question, please?

(Question read.)

THE WITNESS: Obviously not.

If I didn't have the information from the documents I didn't have any information and obviously couldn't give him any information.

By MR. HALL:

Q. In Exhibit 26 at page 12, Mr. Gunn, you state that Hutchinson retained Morison as a consulting engineer after the end of the partnership until Morison's death in 1903.

Whom did Hutchinson retain as consulting engineer at that time?

MR. KING: What time?

THE WITNESS: 1903?

By MR. HALL:

Q. Yes. A. After Morison's death?

Q. Yes. A. I don't know whether or not he retained anybody. Sometime between there and June 13, 1905, he evidently retained William Barclay Parsons.

Q. You don't know the exact date he retained Parsons?
A. No, I do not.

[6664] TRIAL EXAMINER: You said June.

THE WITNESS: I mean January, 1905; January 13, 1905.

By MR. HALL:

Q. Parsons was associated with Hutchinson in his proposed power project. Isn't that so? A. I don't know what you mean by "associated."

Q. He was engaged by Hutchinson to make engineering studies and so forth? A. Yes.

Q. And the report he prepared is embraced in part 3 of Exhibit 27. Is that right? A. Yes, sir, as I recall it is in there.

[6672] Q. Mr. Gunn, is it correct to say that the Holtwood project was conceived by Cary T. Hutchinson, electrical engineer, about the year 1901?

[6673] A. Yes. It appears that Hutchinson first became interested in development of hydroelectric power on the Susquehanna River in 1901 or 1902. However, the difficulty I was having was this: I don't think that when he first

became interested in the river, that he had in mind the precise location or the scope of the project that was ultimately built at the McCall site.

Q. What I mean to say is that he conceived the desirability and the possibility of a project in the general area that the Holtwood project now is located? A. Yes.

Q. About the year 1901? A. Yes, I think that is about right.

Q. Did the Hutchinson group carry on their activities in competition with two other major interests known as Harlow-McGaw and Welch interest? A. Yes.

Q. Did Hutchinson, to protect his position at Holtwood, acquire property below the site of the proposed dam? A. Yes, sir.

Q. Were such acquisitions intended to interfere with and delay execution of the Harlow-McGaw and Welch plants? A. Yes, I think that was their general purpose.

Q. The Welch holdings I believe were located in the general vicinity of the present Conowingo project. Is that [6674] right? A. In that general vicinity, yes.

Q. Did the Welch holdings overlap the Harlow-McGaw properties to any extent? A. Well, Harlow-McGaw properties, I think it would be more proper to say, overlapped the Welch properties and McGaw properties, both, particularly Harlow-McGaw's ownership of the Welch—

Q. The Welch holdings on the lower Susquehanna partially overlapped the Harlow-McGaw properties. The Harlow-McGaw properties extended upstream into the territory involved not only in the present Holtwood development but even beyond that development into the present area of the Safe Harbor development? A. Yes, that is true. Harlow-McGaw properties, of course, also extended downstream through the Welch properties.

Q. Yes, that is my understanding. As I understand it, Welch and Harlow-McGaw were opposing interests for land and water rights, but not Welch and Hutchinson. A. That is my understanding of it.

Q. Were all three groups competitors for power markets and financing? A. Yes, I think they were.

Q. Did the overlapping of the separately-controlled properties, together with the aspirations of the opposing groups, present a stumbling block for the financing of any of [6675] the contemplated projects prior to Hutchinson's option obtained from Harlow-McGaw?

A. Yes, I think the overlapping did constitute a stumbling block.

Q. However, Hutchinson did finally enter into a compromise agreement with Harlow-McGaw on April 14, 1903, which removed Harlow-McGaw's opposition to the Holtwood development? A. That is correct.

Q. That option agreement was never carried out? A. No, it was not carried out because Fisk ultimately bought the whole of the Harlow-McGaw holdings.

Q. But notwithstanding the fact that it was never carried out, the option agreement did break the previously-existing deadlock and permit Hutchinson to go forward with the development? A. Yes, sir.

Q. Did Harlow-McGaw in April, 1905, make the final [6676] attempt to bring the entire river area under one management by suggesting a plan to Harvey Fisk and Sons for the consolidation of all interests on the Susquehanna River? A. As I recall it that is correct. They first suggested, I believe, a proposal for overall development of the river, and then later, when Harvey Fisk and Sons didn't accept that they proposed to sell the properties to Harvey Fisk. The thing that confuses me is the fact there was a man by the name of Pullen also trying to accomplish the same thing.

Q. Just prior to Harlow-McGaw's suggestion to the Fisk firm did Charles D. Pullen obtain an option on the Harlow-McGaw properties in an effort to combine the conflicting interests? A. Well, it was quite a little time prior to that. As I recall it, Pullen first obtained an option

on the Harlow-McGaw properties and on the Welch properties, and attempted also to obtain an option on the Hutchinson properties.

Q. Pullen's option was subject, among other things, to Hutchinson's unexpired option. Isn't that right? A. Yes, I think it was. It was also subject to his obtaining an option from Hutchinson to combine Hutchinson's properties with the other at first. Then it was later modified so that it related to Harlow-McGaw and Welch, I believe.

Q. Was McCall Ferry unwilling to pool its interests as suggested by Harlow-McGaw, and did they insist on carrying [6677] out Hutchinson's option? A. Yes, as I understand it they insisted on carrying out Hutchinson's option.

Q. Was that controversy settled on April 27, 1905 by the execution of two contracts for the acquisition by McCall Ferry interests of all rights, properties, and other assets owned by Harlow-McGaw? A. Yes, sir.

Q. And the considerations stated in those two contracts I believe were \$200,000 in cash, \$250,000 principal amount of McCall Ferry bonds, and \$100,000 par value of McCall Ferry common stock? A. Yes, that was the consideration stated in the agreement to purchase Harlow and McGaw's property. But there was also another transaction that took place at that time.

Q. I think I will come to that transaction. If I don't, Mr. Gunn, remind me. A. Yes, sir.

Q. Was one of the contracts for the acquisition of the Harlow-McGaw properties subject to Pullen's option? A. Yes, sir, it is my understanding it was.

Q. Pullen had obtained that option from Harlow-McGaw? A. Yes, sir.

Q. Was this option purchased for \$10,000 in cash and \$15,000 par value on the common stock? [6678] A. Yes, sir, that was the purchase price.

Q. The option held by Hutchinson which was not exercised covered only a portion of the Harlow-McGaw prop-

erties. Is that right? A. Yes, sir. Those portions that would interfere with the Holtwood project.

Q. But the two contracts obtained on April 27, 1905, were for the total properties of Harlow-McGaw, right? A. Yes, from their total holdings on the river.

Maybe it would be important to note that the option McCall Ferry had with Harlow and McGaw provided for more than just the release or the withdrawal of Harlow's objections to the Holtwood development. It provided for a right of way for a proposed Harlow Railroad and the construction of locks in the Holtwood dam, and navigation facilities above the reservoir, above the Holtwood reservoir.

[6679] Q. When was the capitalization of McCall Ferry Power Company increased from the original 10 shares to 50,000 shares of common and 50,000 shares of preferred?

A. That authorization for the increase in capitalization of McCall Ferry Power Company appears to have taken place on June 13, 1905.

Q. Were both the common and preferred stock of McCall Ferry Power Company voting stock? A. As I recall it they were. I think I can check it if you wish.

Q. Will you do that? A. Yes, they were both voting stock.

Q. Prior to the incorporation of McCall Ferry Power Company, had Hutchinson made any effort to finance the hydroelectric project? A. Yes, I think he had. Prior to that date the underwriting undertaken on March 1 had been tried and failed.

Q. In other words, in February of 1905, Hutchinson did attempt to finance the project? A. Yes, and it failed.

Q. Was that Hutchinson's first attempt to finance [6680] a project as well as the first attempt of anyone associated with him in the proposed project? A. It seems to me that there had been a previous attempt, but I don't have in mind the facts. I think I could verify that if you wish.

Q. Will you do that, please? A. I don't have before me the facts with which to verify that. My recollection is that prior to 1905 some consideration had been given to financing the Hutchinson project, but that it was not nearly on the extensive scale that the March 1 attempt was.

Q. What happened in February of 1905 insofar as Hutchinson's effort to finance the project is concerned? A. It failed.

Q. What did they accomplish in February of 1905 insofar as the financing of the project is concerned? A. They obtained subscriptions, as I recall, for something like half of the bonds.

Q. What financing houses did Hutchinson approach with reference to financing the project in February of 1905? A. As I understand it, the financing house was Bertron, Storrs and Griscom, and Bertron, Storrs and Griscom was working in cooperation with Lee, Higginson & Company.

Q. Was a syndicate formed in February of 1905 for the purpose of financing the project? [6681] A. Yes, sir.

Q. Was that the first time Bertron, Storrs & Griscom had been approached with respect to the financing of the McCall Ferry project? A. That is the first record I know of, the first indication I have found that they were approached.

Q. What was the proposition that the Hutchinson group presented to Bertron, Storrs & Griscom? A. Well, as I understand it it was in principal that the bankers would obtain the necessary underwriting in raising the funds to construct the project. About eight million dollars of bonds would be issued and about four million dollars of preferred stock would be issued, and about four million dollars of common stock.

I believe the preferred stock was to be issued in combination with the bonds and the common stock was to be

divided equally between Hutchinson and his associates and the bankers.

Q. Do you mean that the preferred stock was to accompany the bonds as a bonus? A. Yes, it would accompany the bonds in a combination.

Q. As a bonus? A. Call it whatever you please. They were going with the bonds. The shares of preferred stock were going to be issued with the bonds in combination.

[6682] Q. Was the understanding between the Hutchinson group and the other syndicate members reduced to writing? I am speaking now of the original syndicate.

TRIAL EXAMINER: Which was that? February 1905?

MR. HALL: Yes.

THE WITNESS: The financing plan was reduced to writing, I believe, to this extent: That the amount of each different class of security to be issued, I believe, was stated.

By MR. HALL:

Q. Are you saying now that it was reduced to the extent reflected in part 5 of Exhibit 27? A. Yes, sir.

Q. Which is the prospectus and underwriting agreement dated March 1, 1905? A. Yes, sir, it was to that that I referred.

Q. Mr. Gunn, I refer you to page 17 of Exhibit 26, paragraph No. 2. Do you not there state that the "Subscribers to the bonds would receive a bonus of 50 per cent in preferred stock"? A. I believe that is the language which was used in the underwriting agreement.

Q. There is no question about it. The preferred stock did accompany the bonds as a bonus. Is that right? A. It accompanied the bonds, period.

The Dimock, Bertron and Barney underwriting agreement [6683] called it a bonus, as I recall.

Q. Will you point out where in part 5 of Exhibit 27 the preferred stock is referred to as a bonus? A. Do you want me to examine it thoroughly now?

THE WITNESS: Mr. Hall, if you refer to page 48 of Exhibit 27, the fourth paragraph and the fourth line, you will find it there called a bonus.

By MR. HALL:

Q: You don't disagree with that description, do you, Mr. Gunn? A. If it has no abnormal connotations, I do not.

Q. What do you mean by "abnormal connotations"?

A. In the sense it is to be used as an epithet to discredit the financing.

Q. What does "Bonus" mean to you, Mr. Gunn, as used on page 48 of Exhibit 27? A. It simply means to me that the bonds and the stock were given in exchange for the amount of money that was to be raised.

Q. How much cash was to be received for the bonds, Mr. [6684] Gunn? A. For the bonds and the stock, \$900.

Q. Just for the bonds? A. I don't know.

Q. What financial experience have you had, Mr. Gunn? A. Practically none, except my own personal financing, and I haven't been very successful.

. . .

[6685] By MR. HALL:

Q. Have you investigated the mode followed in 1905 in connection with financing hydroelectric projects?

THE WITNESS: May I have the question, please?

(Question read.)

THE WITNESS: I have a general knowledge of it only.

By MR. HALL:

Q. Don't you know it to be a fact that in those days it was a practice to issue bonds with a sweetener in the form of stock? A. I know only that it was the practice, as I understand it, to issue combinations of bonds and stocks for a certain amount of money. You can call it a sweetener or a bonus or anything else you want to. That is all I know about it.

. . .

[6692] Q. As I understand it, part 5 of Exhibit 27 shows the arrangement between the syndicate and the subscribers but it does not disclose the arrangement or agreement among the syndicate members themselves? A. I believe that is correct.

Q. I believe you have indicated in your testimony that you were unable to locate any agreement setting forth the arrangement between the syndicate members themselves? A. That is correct.

Q. Then, as I understand it, you do not know what arrangements were agreed upon between the syndicate members themselves? A. Well, I know from Mr. Hutchinson's affidavit.

Q. If you eliminate that affidavit you have no basis for stating what the arrangement was between the syndicate members themselves? A. That is correct, I believe—if you eliminate that then I wouldn't know.

Q. Do you know what business Dimock, Hutchinson's father-in-law, was engaged in in the four or five years covering the period from 1902 until 1905? A. As I recall it, I believe he was connected with [6693] some steamship company, although I don't know just how. I have very little knowledge at all of his activities.

[6694] Q. Do you know whether Mr. Dimock had been acquainted with Bertron, Storrs & Griscom, or any member of that firm, before the syndicate was formed in February, 1905? A. No, I don't know. I assume he must have been acquainted with them for some time before the formation of the syndicate.

Q. What was the nature and extent of the prior association of Dimock and members of the firm of Bertron, Storrs & Griscom? A. I have no idea.

. . .

[6696] By MR. HALL:

Q. You have indicated previously that you did not find the agreement between the syndicate members themselves. A. Well, when I answered that question I was under the

impression that you were referring to Dimock, Bertron and Barney.

Q. Why did you think I was referring to those individuals?

TRIAL EXAMINER: Take Page 14 of your Exhibit 26 where you said "Pursuant to this understanding Bertron formed the syndicate."

What was the syndicate?

MR. HALL: That was my question, Mr. Examiner.

THE WITNESS: I don't know, other than Bertron, in cooperation with Lee, Higginson, obtained underwriting to about \$4,000,000 worth of bonds.

TRIAL EXAMINER: Yes, but what did you understand was the basis of that statement when you made it?

THE WITNESS: I had reference to Item 5 in Exhibit 27.

TRIAL EXAMINER: What in Item 5 tells you that Bertron formed the syndicate?

THE WITNESS: Item 5, and what Hutchinson said in his affidavit, namely, that he took, either he or Dimock, took his water rights to Bertron to assist in financing to raise enough money to construct the project.

[6697] TRIAL EXAMINER: Where is that?

MR. KING: Item 4, Mr. Examiner, Page 5 of Exhibit 27.

TRIAL EXAMINER: Page 5 of Exhibit 27?

THE WITNESS: Yes, sir, Item 4 at the bottom of that page.

TRIAL EXAMINER: All right. Is that all you know about that as far as the syndicate is concerned?

MR. GOLDBERG: Let's get the reference straight here. The difficulty with the references to Exhibit 27 is that there are two sets of numbers on the pages.

THE WITNESS: Three sets on this page.

MR. GOLDBERG: There is a numbering system for Exhibit 27 which runs from "one" straight to the end. I think it would be better if we all used those numbers.

TRIAL EXAMINER: It is Page 5 of those numbers.

Is that all you know about the formation of that syndicate?

THE WITNESS: Well, I know what is stated in Item 5 of Exhibit 27, and I know that the syndicate, headed by Bertron and managed by these three individuals we have discussed, did obtain subscriptions to about \$4,000,000 worth of bonds.

TRIAL EXAMINER: Read that, please.

(Witness' statement read.)

TRIAL EXAMINER: Do you know anything about the character of the syndicate itself?

THE WITNESS: No.

TRIAL EXAMINER: Or the composition of the syndicate, who [6698] composed it?

THE WITNESS: No, I don't know anything more about it than is revealed by Exhibit 26 and Exhibit 27, and perhaps some collateral information we have in our files which has been available to the Commission staff. That is all I know about it.

TRIAL EXAMINER: Does that collateral information indicate anything more about the formation of the syndicate?

THE WITNESS: I don't believe it would.

[6700] Q. Mr. Gunn, you have referred to Charles T. Barney, I believe, as being one of the managers under the agreement which is part 5 of Exhibit 27. Is that right? A. Yes, sir.

Q. Will you identify Mr. Barney for the record? A. Yes, sir. He was President of the Knickerbocker Trust Company of New York.

Q. When did he first become associated in any manner with McCall Ferry Power Company? A. I don't know.

. . .

[6701] Q. You also referred to Mr. C. A. Coffin as a manager under the agreement which is part 5 of Exhibit 27. Will you identify Mr. Coffin? A. Mr. Coffin? I don't think I referred to him.

Q. I am wrong about that. Will you identify Mr. Coffin [6702] for the record? A. Yes, sir. I understand at that time he was President of General Electric Company.

Q. What part did Mr. Coffin play in the original syndicate? A. May I have the question, please?

(Question read.)

THE WITNESS: I don't know what part he played in the Dimock, Bertron and Barney attempt, but either in that attempt or in the one headed by Fisk, Mr. Coffin obtained subscriptions for some bonds, I believe.

By MR. HALL:

Q. When did Mr. Coffin first become associated with the project?

. . .

THE WITNESS: I can't state precisely when Mr. Coffin was first associated with it, but if you will refer to Page 60 of Exhibit 27 near the middle of the page in a letter written by Gardiner M. Lane to Mr. Robert Fleming, in London, England, on the first page of the letter dated March 10 there is the following statement: "Some time ago Mr. Coffin, [6703] President of General Electric Company, brought the McCall Ferry Power to our attention."

By MR. HALL:

Q. According to the statement made by Mr. Lee as shown at the bottom of Page 66 of Exhibit 27, that "some

time ago" would be about 1903, is that correct? A. Yes, sir, that statement would indicate it was about 1903.

Q. At whose request or sponsorship did Mr. Coffin become associated with the McCall Ferry project? A. I don't know.

Q. What was Mr. Coffin's interest in the initial syndicate? A. I don't know.

[6704] Q. Can you state that it was a fact that Hutchinson secured funds for his project activities from individuals other than Mr. Dimock? A. I can state it no more than what Hutchinson says in his affidavit. I have no personal knowledge of it.

[6705] Q. Was Mr. Hutchinson able to recall any individuals whom he reimbursed for advancements which had been made to him? A. He recalled his father-in-law, at least.

Q. Other than his father-in-law. A. I don't recall that he did, although he did identify some people to whom he had been obligated for services, and to whom he made payments.

Q. Who were they, Mr. Gunn? A. One was a Thomas Newhall of Philadelphia, to whom I believe he said he gave 1,000 shares of stock.

Q. What had Newhall done? A. I believe Newhall had assisted Hutchinson in his negotiations with Pennsylvania Railroad Company for the relocation of the tracks.

Q. Anything else? A. As I recall it that is all Hutchinson said he had done.

Q. Do you recall he gave you any other names of individuals to whom [6706] he made reimbursements? A. Well, I believe he paid off his counsel who had assisted him, that is Coudert Bros., who were his counsel up until the time Fisk took control and replaced them. I believe he paid them—

Q. That was not reimbursement for advances made to Hutchinson but rather was payment by Hutchinson for services rendered. A. Yes. I thought that was one and the same thing.

. . .

Q. Dimock, of course, was closely associated with Hutchinson in carrying out Hutchinson's proposals in connection with the project? A. Yes, sir.

Q. What part did Mr. Dimock take in the financing arrangements? A. I don't know, other than that Hutchinson, I believe, says that Dimock made the arrangement with Bertron, Storrs & Griscom. I believe he mentions that. Other than that I don't know what part he took.

Q. Will you identify Lee, Higginson and Company for the record? A. They are a financial house, I suppose you would call [6707] them, a bank in Boston.

Q. Was Mr. Coffin instrumental in bringing Lee, Higginson & Company into the financing? A. I don't know, but Lee, Higginson's records show Mr. Coffin called their attention to it. Whether or not that constituted bringing them in I don't know.

Q. Under the initial financing plan by Hutchinson, Dimock, Bertron, which is covered by the document comprising part 5 of Exhibit 27, what disposition was to be made of the common stock? A. One-half of the issue of \$4,000,000 par value of common stock was to be given to the bankers, and one-half was to be given to Hutchinson.

Q. What is the basis for that statement, Mr. Gunn? A. Mr. Hutchinson's affidavit.

Q. What connection did Mr. Gardiner M. Lane have with Lee, Higginson & Company? A. He was a partner.

. . .

[6709] Q. . . . Lee, Higginson and Company secured subscriptions to what amount of bonds under the initial syndicate agreement, approximately? A. As I recall it, it

was approximately two million dollars. However, that can be checked.

Q. I believe you stated near the bottom of page 19 of Exhibit 26 that it was approximately \$2,500,000.

THE WITNESS: May I have the question, please?

(Question read).

THE WITNESS: Yes, that is correct. My memory was in error when I said two million dollars.

[6710] Q. Incidentally, Mr. Lane became a director of McCall Ferry Power Company in August of 1905. Isn't that so? A. I believe that is correct.

Q. At the same time he was also selected a member of the executive committee of McCall Ferry. Is that right?

A. I think that is also correct.

[6717] Q. Under the original syndicate plan how much cash was Hutchinson to receive for his holdings? A. \$750,000.

Q. Did Hutchinson ultimately receive, under the contract which is part 19 of Exhibit 27, the \$750,000 in cash and the common stock of McCall Ferry Power Company as provided for in connection with the initial financing before Harvey Fisk and Sons came into the picture?

THE WITNESS: May I have the question?

(Question read).

THE WITNESS: Yes, it is my understanding that Hutchinson did, that being 18,840 shares of common stock. The odd shares arise out of the fact that some of Hutchinson's stock appears to have been taken to satisfy other land acquisitions, namely, the Harlow and McGraw acquisition, and the Pullen acquisition.

[6718] By MR. HALL:

Q. You referred, Mr. Gunn, to Hutchinson receiving 18,840 shares of common stock and not 48,840 shares? A. Yes, sir.

Q. After Harvey Fisk and Sons were brought into the financing arrangement and McCall Ferry Power Company was organized, didn't Hutchinson, in accordance with his contract with Susquehanna Contracting Company, transfer his property holdings to McCall Ferry Power Company? A. Yes, in the transfer they passed through Susquehanna Contracting Company and then to McCall Ferry Power Company.

Q. And those holdings included the lands and rights covered by Hutchinson's option on the York Furnace properties? A. Yes, sir.

Q. Didn't that transaction take place under the contract embraced in part 19, Exhibit 27?

THE WITNESS: May I have the question, please?

(Question read).

THE WITNESS: Yes, sir.

. . .

[6719] By MR. HALL:

Q. Did Susquehanna Contracting Company and Hutchinson ever enter into an agreement which in any way amended or modified the contract embraced in part 19 of Exhibit 27?

. . .

[6720] THE WITNESS: They entered into another agreement and it seems to me to have amended it.

By MR. HALL:

Q. Which one is that, Mr. Gunn? A. Agreement shown on page 172 of Exhibit 27.

Q. Do you recall generally what that provides? A. Provides for Hutchinson indemnifying or guaranteeing the

titles of the property he had transferred under the previous exhibit.

Q. This agreement you are now referring to did not modify or amend in any way the consideration to be paid to Hutchinson for his property holdings? A. No, but it could have the effect of causing Hutchinson to spend some more of it in perfecting of the titles of the property he had transferred if the titles were not perfect.

[6721] Q. What consideration was called for in Hutchinson's contract with Susquehanna Contracting Company, which is Part 19 of Exhibit 27? A. There was to be passed to Hutchinson under that agreement 750 thousand dollars in cash, four thousand shares of preferred stock, and 48,840 shares of common stock.

Q. Doesn't the consideration called for in that contract bear out the fact that Hutchinson ultimately received what it was initially planned he would receive?

THE WITNESS: Yes, I think the agreement bears that out except in this respect: It bears it out that he could receive from that amount substantially the same number of shares of common stock. However, in the intervening transaction [6722] between the first underwriting and the second one the number of common shares had been increased, as I recall it, from 40,000 to 50,000. So in the first instance he was to receive a half of the equity in the company and in the second instance he was to receive two-fifths of the equity in the company.

By MR. HALL:

Q. Now, Mr. Gunn, this contract shows that Hutchinson received 48,840 shares of common stock rather than the 18,840 shares that you referred to a few minutes ago? A. Yes, sir, this agreement shows there passed through Hutchinson's hands 48,840 shares.

TRIAL EXAMINER: Where did you get the 18,840? Are you interpreting?

THE WITNESS: Not exactly interpreting, Mr. Examiner. I was taking Hutchinson's statement that he received for himself 18,840 shares, and I was also considering a very substantial amount of collateral evidence which shows that was a fact.

You will find that statement of Hutchinson's on page 6 of Exhibit 27 near the middle of the page where Hutchinson states that of the 50,000 shares of common stock the bankers were to receive 30,000 shares, which left only 20,000 shares for Hutchinson after 1,000 shares of that had been used to satisfy the purchase from Harlow-McGaw and 150 shares to satisfy the purchase from Pullen.

[6723] By MR. HALL:

Q. Mr. Gunn, so that we might have in one place in the record the distribution of the 50,000 shares, 48,840 shares were delivered to Hutchinson under Part 19 of Exhibit 27. Is that right? A. Yes, sir.

Q. Ten shares were incorporators' shares? A. Yes, sir.

Q. 150 shares were delivered to Pullen? A. Yes.

Q. And 1,000 shares were delivered to Harlow-McGaw?

A. That is correct.

Q. Does that add up to 50,000 shares of common stock?

A. Yes, sir.

Q. Fifty thousand shares of common stock represented the total issued and outstanding common stock of McCall Ferry Power Company? A. Yes, sir.

Q. If Hutchinson, as you indicated, was not to retain the 48,840 shares of common stock and the 4,000 shares of preferred stock, where is the agreement between the syndicate members which specified the distribution which was to be made of the stock? A. I don't know. I don't know that there ever was such an agreement. I attempted in the original cost study by every [6724] means I knew to find such an agreement, even to the extent of going to the only surviving member of Simpson, Thacher and Bartlett, who

had any connection with Harvey Fisk at the time this transaction took place, and asking his advice, Charles B. Eddy, asking his advice as to how or where I might look for such an agreement. It was his opinion that there may never have been a formal agreement reduced to writing which made that provision but rather that the division of the stock was carried out coincidental with the other transactions and didn't require an agreement.

Q. Then am I right in assuming that the only basis you have for saying that Hutchinson was not to retain all of the 48,840 shares of common stock, and the four thousand shares of preferred stock, is Hutchinson's statement in Part 1 of Exhibit 27?

THE WITNESS: No, you are not correct in making that statement.

By MR. HALE:

Q. What is the other evidence you have, Mr. Gunn?

A. A very considerable amount of it included in Exhibit [6725] 26, and it consists, for instance, of the evidence revealed by the stock ledgers and stock certificate books of McCall Ferry Power Company, both as regards preferred and common stock, the records of Bertron and Griseom Company where they recorded receipt of it, records of Lee, Higginson and Company where they recorded receipt of some common stock, 5,000 shares to be exact, Fisk's statement that he did receive it, and there is a whole host of evidence that Hutchinson did not keep it all.

Q. Did the evidence you have just referred to disclose the exact distribution of the fifty thousand shares of common stock as well as a distribution of the preferred stock of McCall Ferry Power Company? A. You mean the exact total distribution of it?

Q. That is correct. A. No, it didn't reveal the exact total distribution of it, but it revealed some pretty exact facts concerning the distribution of it. For instance, we

know that the March 1 underwriting agreement provided for a bonus of fifty per cent preferred stock to go with the bonds, that is in combination with the bonds, and that the underwriting agreement of Fisk provided for 45 per cent.

TRIAL EXAMINER: What is the date of that agreement?

THE WITNESS: March 25.

TRIAL EXAMINER: 1905?

[6726] THE WITNESS: Yes, sir.

TRIAL EXAMINER: All right.

THE WITNESS: And we can trace——

TRIAL EXAMINER: What did that agreement provide? 45 per cent of the preferred to go with the bonds?

THE WITNESS: Yes, sir.

• • • It is possible to trace, I believe, somewhere near 2,000 shares of that 4,000 shares to the original subscribers under the March 1 agreement in satisfaction of their difference between 45 per cent preferred stock and 50 per cent preferred stock given in combination with bonds.

Q. Did the evidence that you have referred to show the circumstances under which the people or firms you referred to came into possession of the common stock and preferred stocks?

THE WITNESS: May I have that question, please?

(Question read.)

THE WITNESS: It seems to me that it did. For instance, [6727] Lee, Higginson received 5,000 shares.

TRIAL EXAMINER: Of what?

THE WITNESS: Common stock, as their compensation for underwriting 2½ million dollars worth of bonds.

Is that the circumstance you refer to?

By Mr. HALL:

Q. What records substantiate what you have just said, Mr. Gunn? A. The fact Lee, Higginson received five thousand shares and the obvious fact Lee, Higginson obtained 2½ million dollars worth of bond subscriptions.

. . .

[6728] Q. Mr. Gunn, was the firm of Harvey Fisk and Sons invited to join the McCall Ferry project financing during the early part of March, 1905? A. As I understand it, they were requested to salvage it after the first attempt to finance it failed. Is that the invitation to which you refer?

Q. Are you saying anything different from what is contained in the bond and stock purchase agreement, Part 10 of Exhibit 27, specifically the paragraph at the top of page 82 where it is stated "Whereas, the bankers have been requested and are willing to aid in financing the said plant to the extent of taking agreement from the subscribers for the purchase of bonds and preferred stock of the power company, of acquiring the bonds and stocks for delivery under such purchase, and of making or procuring the loans herein mentioned;—?"

. . .

[6729] THE WITNESS: No.

By Mr. HALL:

Q. Under the original syndicate what amount of bonds, referring now to par value, did the initial syndicate secure subscriptions for? A. Approximately \$4,000,000 par value bonds.

Q. Did Harvey Fisk and Sons come into the financing as bankers under the agreement which is Part 10 of Exhibit 27? A. Yes, sir.

Q. When the Fisk firm came into the financing who were the five largest interests in the McCall Ferry enterprise?

. . .

THE WITNESS: Mr. Hall, how do you want interest measured? In terms of bond subscriptions or what?

By MR. HALL:

Q. For the purpose of my question will you measure it in terms of common stockholders, or proposed holders?

A. Read the question, please?

Q. Let me add to that question.

Who became the five largest interests in the McCall Ferry enterprise after its organization, that is the organization of McCall Ferry?

. . .

[6730] THE WITNESS: It is impossible to tell until the date on which the common stock was distributed and when the common stock was distributed—

By MR. HALL:

Q. What is the date you refer to, Mr. Gunn? A. I think it was about the middle of June, 1905. The distribution of common stock which resulted was the (sic) [to] Hutchinson, and whoever he may have given it to in his group, who had 18,840 shares. Harvey Fisk and Son had 17,537½ shares.

Bertron, Storrs and Griscom had 7,462½ shares.

Lee, Higginson had 5,000 shares.

Harlow-McGaw had 1,000 shares. Those were the five [6731] largest holders.

I didn't quite read that correctly. In addition to the amounts I read for Hutchinson there should be added four shares which were of the original qualifying ten shares, and of the amount stated for Harvey Fisk and Son should be added six shares, which were six of the original qualifying shares.

Q. What is the distribution based upon, that is what you just read? A. I read it from Exhibit 26.

Q. What is the basis for that distribution contained on Page 51 of Exhibit 26? A. Various bases for it. The stock certificates, the agreement with Harlow and McGaw

to deliver them 1,000 shares, the records of Lee, Higginson which show they received 5,000 shares, the records of Bertron, Griscom and Company which show they received 7,462-and-a-half shares, the stock certificate book which shows that two certificates were issued, one for 18,840 shares and one for 30,000 shares, the statement of Hutchinson that he received the certificate which called for 18,840 shares, and the statement of Harvey Fisk and Son that he received 17,537½ shares.

Q. To whom was the certificate for the 30,000 shares issued? A. To the Susquehanna Contracting Company.

Q. When did they receive the stock? [6732] A. About the middle of June.

Q. 1905? A. Yes, 1905, when the whole group of transactions which made the property transfers take place.

Q. When did they distribute those shares you referred to? Speaking now of Susquehanna Contracting Company, referring to the 30,000 shares. A. May I have the question?

(Question read.)

THE WITNESS: The only thing that I have in the shape of a record to indicate the date on which that took place are the records of Bertron, Griscom and Company which show that they received 12,462½ shares on November 21, 1906. That amount of shares represented their 7,462½ shares plus the 5,000 shares which were conveyed by them to Lee, Higginson.

By MR. HALL:

Q. How do you know that, Mr. Gunn, that is about the transfer to Lee, Higginson? A. Lee, Higginson's records show that they received it, and Bertron's records also show that they transferred it to Lee, Higginson.

[6733] By MR. HALL:

Q. Mr. Gunn, where does Fisk make the definite statement that Harvey Fisk and Sons received 17,543½ shares

of common stock? A. The statement which Mr. Fisk made occurs on Page 79 of Exhibit 27 under paragraph number 10 on that page.

Q. Where in that paragraph number 10 does he say that the Fisk firm received 17,543 shares of common stock, definitely received that? A. The paragraph states as follows, though not in exact shares: "Stock only; common stock, in my opinion at least as much as the 12,000-odd shares that went to Bertron, Storrs & Griscom and probably the difference between that amount and the 30,000 shares represented by one of the two largest [6734] certificates issued; also apparently the 1,800-odd shares of preferred stock that went to my firm."

Q. When Mr. Fisk referred to 12,000 odd shares was he referring to Bertron, Storrs and Griscom compensation?

A. Yes, he was referring to Bertron, Storrs and Griscom's receipt of 12,462½ shares on behalf of Bertron, Storrs and Griscom and Lee, Higginson.

Q. How do you get that out of this paragraph, Mr. Gunn?

MR. KING: I object to the question. The paragraph speaks for itself.

TRIAL EXAMINER: I will sustain the objection.

MR. HALL: Mr. Examiner, the—

TRIAL EXAMINER: You can ask him where he gets it. It is apparent from the paragraph the figure is not there.

By MR. HALL:

Q. Mr. Fisk uses the words "in my opinion—apparently." What he says here is all guess work, isn't it?

A. You can't characterize it as guesswork. When Mr. Fisk made this statement he had before him all of the information that we had in our possession which had a bearing on the stock distribution. I don't see why it should be characterized as guesswork on his part.

Q. None of that information told you definitely that Harvey Fisk and Sons received 17,543 shares of stock. Is that right?

[6735] MR. KING: You mean tells Mr. Gunn definitely or Mr. Fisk?

THE WITNESS: I think it very well may have told him by deduction without very much difficulty.

[6736] Q. Were there any files of Harvey Fisk and Sons available at the time you contacted Mr. Fisk? A. No, sir, we never were able to find any of them.

Q. Then what Mr. Fisk says is based upon information you furnished him, but not obtained from files of Harvey Fisk and Sons? A. Yes, plus Mr. Fisk's recollection.

[6739] By MR. HALL:

Q. Part 10 of Exhibit 27 shows the arrangement between Fisk and the subscribers to that agreement. Is that right? A. Yes, sir.

Q. It does not show the arrangement between the syndicate members themselves? A. No.

Q. Do you have a copy of the agreement entered into between the syndicate members themselves? A. No.

Q. Have you ever seen a copy of any such agreement? A. No, sir, I have not.

[6740] Q. There is no reference in the agreement of March 25, 1905, to the distribution of common stock. Is that right? I mean the distribution to be made of the common stock.

THE WITNESS: May I have the question, please?

(Question read.)

THE WITNESS: Yes, there is a reference on page 81 of Exhibit 27 to the purpose for which all of the securities of McCall Ferry Power Company will be used. That reference is in the last paragraph on page 81.

By Mr. HALL:

Q. That reference does not disclose the distribution to be made of the common stock. Right? A. By "distribution," I take it you mean the number of shares that will go to various individuals or firms?

Q. Yes. A. No, it does not disclose that.

Q. Among other things, this reference that you have just referred to provides that the common stock was to be issued among other things for "all profits in connection with bringing together and turning in of said properties"?

A. Yes, and for compensation for financial assistance.

Q. There is likewise no reference in the March 25, 1905, agreement to the 4,000 shares of preferred stock issued to Hutchinson pursuant to his contract which is part 19 of Exhibit 27. Isn't that so? [6741] A. No, there is no mention except indirectly. The terms of the March 25 agreement under which the bonds were to be issued called for a one thousand dollar bond together with preferred stock of a par value of \$450, which is the 45 per cent stock combination that we have spoken of.

Now, it was out of that change in the amount of stock to be issued with the bonds between the March 1 agreement and March 25 agreement which brought a part of the four thousand shares into the agreement with Hutchinson, as I understand it, it being necessary to make up the difference to the subscribers under the March 1 agreement in order for Fisk to hold those subscribers.

[6746] Q. Did the subscribers to the initial agreement, part 5 of Exhibit 27, become subscribers to the March 25, 1905, agreement or did Lee, Higginson and Company subscribe to the March 25, 1905, agreement on behalf of the subscribers to the initial agreement? A. It is my understanding that the initial subscribers under the March 1 agreement became subscribers under the March 25 agreement and Lee, Higginson was also required to endorse

their subscriptions. At least that is my understanding of it.

Q. You had two subscriptions covering the same amount of bonds. Is that what you are saying? A. Well, it is a subscription and an endorsement.

Q. What did the endorsement mean? A. As I understand it it was a guarantee of Lee, Higginson as a firm to be used in connection with the loans from Knickerbocker Trust Company in case the actual subscribers themselves didn't pay up.

Q. What is the basis for your understanding in that connection? A. May I have the question, please?

(Question read.)

THE WITNESS: The basis for my understanding of that is [6747] information that I obtained from the Irving Trust Company, who were successors to Knickerbocker Trust Company after the failure, that being data which Irving Trust Company had prepared in connection with final settlement with the deferred subscribers. I don't remember the details of that and if you wish details on it it will be necessary for me to look it up.

. . .

By MR. HALL:

Q. Had you finished your last statement, Mr. Gunn?

A. May I have it read, please?

(Statement of witness read.)

THE WITNESS: Yes, sir, I had finished.

By MR. HALL:

Q. When did the final settlement to which you refer occur? A. I believe it was in 1908.

Q. What was the occasion for the settlement, Mr. Gunn? A. The occasion for the settlement was when the loan fell due on November 2, 1908.

Q. Let us fix that just a little more definitely, Mr. Gunn. Part of the bonds were non-deferred subscriptions

and part were deferred subscriptions? A. Yes, sir.

[6748] Q. And the Knickerbocker Trust Company loaned construction funds to McCall Ferry with the deferred subscriptions as collateral for the loan? A. That is correct.

Q. Is it in connection with settling the loan agreement that the final settlement you refer to occurred? A. Yes, sir, the loan agreement for which the deferred subscriptions were collateral.

Q. What type of information did the Irving Trust Company have in connection with the final settlement which showed an obligation on the part of Lee, Higginson and Company? A. The large tabulation of the bond subscribers which showed a certain group of bond subscribers, and, as I recall it, had written along by the side of it a notation to the effect that certain of the bond subscriptions were to be guaranteed by Lee, Higginson and Company.

Q. In other words, Mr. Gunn, there was an individual list of subscribers with a marginal notation to the effect you mentioned? A. Yes, as I recall it that is what it consisted of.

. . .

[6750] By MR. HALL:

Q. Did they do that to the extent of the subscriptions obtained under the March 1, 1905, agreement? A. That is my understanding.

Q. That was two and a half million dollars? A. Yes, about that amount.

Q. Did the other members to the March 1, 1905, agreement obtain bond subscriptions? A. Yes, there were additional bond subscriptions obtained.

Q. In approximately what amount? A. Well, the difference between about two and a half million and four million, I think.

Q. In other words, the other members obtained a million and a half and Lee, Higginson two and a half million, making a total of four million under the initial agreement? A. That is approximately the full amount.

Q. When I refer to the initial agreement I am referring to the March 1, 1905, agreement. A. That is what I understood you to be referring to.

Q. The original undertaking by its terms was not to become operative until subscriptions to six million principal amount of bonds had been obtained. Is that right?

A. You are again referring to March 1?

Q. Correct. [6751] A. That is correct.

Q. The six million goal was never reached? A. That is my understanding of it.

Q. When it became evident that the original syndicate members were not going to be able to complete the financing did they invite Harvey Fisk and Sons to come into the financing picture? A. That is my understanding.

Q. And Harvey Fisk and Sons became bankers under the agreement which is incorporated as part 10 of Exhibit 27. Right? A. Yes, sir.

Q. Were the subscriptions already obtained under the March 1, 1905, plan retained under the subsequent plan of March 25, 1905? A. Yes, sir.

Q. Did the March 25, 1905, agreement provide for a 45 per cent bonus of preferred stock with the bonds? A. Yes, sir.

Q. What preferred stock bonus was provided under the commitments which had previously been obtained by Lee, Higginson and Company to its customers under the March 1, 1905, agreement? A. 50 per cent.

Q. Did Lee, Higginson Company customers who became [6752] subscribers to the March 1, 1905, agreement for \$2,500,000 principal amount of bonds receive a 50 per cent bonus in preferred stock notwithstanding the fact that the March 25, 1905, agreement provided for only a 45 per cent bonus? A. Yes, that is my understanding.

[6753] Q. Was part of the 4,000 shares of preferred stock issued to Hutchinson under the contract which is part 19

of Exhibit 27 used to supply the additional 5 per cent to the original subscribers? A. Yes, sir.

[6756] By MR. HALL:

Q. You have testified that under the initial financing agreement of March 1, 1905, Lee, Higginson and Company obtained subscriptions to 2½ million dollars principal amount of a total of four million dollars principal amount. Did the subscribers to the other \$1,500,000 become subscribers to the agreement of March 25, 1905? A. I don't know. I believe they did, although I do not know as a fact.

Q. Did the subscribers to the \$1,500,000 principal [6757] amount of bonds receive a 45 per cent stock bonus with bonds or a fifty per cent preferred stock bonus?

THE WITNESS: May I have the question, please?

(Question read.)

THE WITNESS: The records in the possession of the company indicate that 2,125 shares of preferred stock were used to supply five per cent bonus on bonds. That would indicate that a bonus was paid on slightly more than four million dollars of bonds, and it would also indicate to me that a bonus was paid on that many because of retaining subscribers other than those that Lee, Higginson had obtained.

By MR. HALL:

Q. That would also indicate, wouldn't it, that the total subscriptions under the initial agreement of March 1, 1905, totaled \$4,250,000 principal amount of bonds. Is that right? A. Yes, sir.

Q. Did they actually sell \$4,250,000 principal amount of bonds under the initial agreement, procure subscriptions for the purchase of bonds in the amount of \$4,250,000 principal amount? A. I don't know, but that figure would indicate that they obtained subscriptions for that amount.

Q. Well, how did you arrive at the figure of 2,125 shares of preferred stock shown in the tabulation on page 51, Exhibit 26? [6758] A. From various items of correspondence and from the stock certificate book.

Q. Did any of those documents state that 2,125 shares of stock were given to the subscribers to the original agreement as an additional 5 per cent bonus? A. I don't remember any single document which said 2,125 given for that purpose.

Q. How did you arrive at the figure? A. But there were documents which mentioned various other amounts as being given. For instance, the documents I referred to a moment ago, being Item 11 in Exhibit 27, the correspondence between Bertron, Storrs and Griscom, and Lee, Higginson.

Q. That merely indicates that Lee, Higginson and Company received a five per cent bonus only insofar as \$2,500,000 principal amount of bonds are concerned. Is that right? A. Yes, sir, it indicates that.

Q. How do you make up the balance of 2,125 shares of preferred stock? A. That information was obtained from the stock certificate book and a distribution of that number of shares shown in the stock certificate book.

Q. Did the stock certificate book show the purpose for which the stock was issued? [6759] A. It shows the list of people to whom it went, and they were subscribers.

Q. But it doesn't show they got the preferred stock because it represented the additional five per cent bonus? A. Yes, I believe there is a list in there which pretty clearly shows that in the stock certificate book.

Q. Mr. Gunn, will you refer to page 191 of Exhibit 27? A. Yes, sir.

Q. Also the page number 186, last paragraph? A. Yes.

Q. According to pages 186 and 191 the stock books of Bertron, Storrs and Griscom show a recording of a total of 2,235 shares. Is that right? I refer to preferred stock. A. Let me check that.

Q. Yes. A. Yes, sir.

Q. And they show that a total of 2,075 were charged out? A. Yes, sir.

Q. Leaving 160 shares on the book? A. Yes.

Q. Who got the 160 shares? A. I don't know. As I recall it, however, Bertron kept it.

Q. Did Bertron, Storrs and Griscom sell any securities under the initial financing agreement? [6760] A. I believe they did.

Q. Can you state that to be a fact? A. Not without verifying it.

Q. Would you do that, and also determine what disposition was made of the 160 shares? A. I think I can determine what disposition was made of the 160 shares now.

Q. All right. A: I believe I will have to check that. This photostatic copy I have is so dim I can't read it.

Q. If you will, Mr. Gunn? A. Yes, sir.

THE WITNESS: May I have the last question, please?

(Question read.)

THE WITNESS: I state the disposition of 160 shares remained in the hands of Bertron, Storrs and Griscom and was written off of their books as having no value on December 22, 1908.

Q. But you are not in a position to say that the 160 shares of preferred stock represents bonus due Bertron, Storrs and Griscom for the sale of bonds under the initial agreement. Is that correct? A. No, I couldn't say that at the moment without checking further.

[6767] Q. Mr. Gunn, this morning we were discussing the consideration received by Hutchinson under the contract which is part 19 of Exhibit 27. Is it your contention that the purpose of the agreement of June 13, 1905, between Susquehanna Contracting Company and Hutchinson was to arrange for the distribution of the 48,840 shares of Mc-

Call Ferry common and 4,000 shares of its preferred stock among the syndicate participants? A. Will you read that question, please?

(Question read.)

THE WITNESS: You mean June 14, don't you?

By MR. HALL:

Q. Yes. A. It is my understanding that the 30,000 shares which went to the syndicate participants were included in the 48,840 shares which passed under the agreement to which you refer from the Susquehanna Contracting Company to Hutchinson.

Q. Was that block of stock included for the purpose of [6768] distributing it to the other syndicate members who ultimately received it?

. . .

THE WITNESS: The stock which was ultimately distributed to the syndicate members is included under the agreement which is Exhibit 19 and it was ultimately distributed to the syndicate members.

[6769] Now, why it was put in that particular instrument I do not know.

By MR. HALL:

Q. In other words, what you are saying is that the contract embraced in part 19 of Exhibit 27 constituted the vehicle for distributing 30,000 shares to the Fisk firm, Lee, Higginson and Company and the other members of the syndicate who received it? A. It seems to me it did.

. . .

[6770] Q. How did you determine, Mr. Gunn, the total amount of common stock which you say was transferred by Hutchinson to other syndicate members?

THE WITNESS: Determined from the stock certificate books, plus all the other bits of evidence that are included in Exhibit 26 and Exhibit 27.

By MR. HALL:

Q. Are you saying that the stock certificate books show the distribution of a total of 48,840 shares? A. No, the stock certificate books as I recall it show two certificates—one for 18,840 and one for 30,000 shares.

Then, as we discussed it this morning we explained the various places where the total of the shares might have gone, and we found that Hutchinson says he received 18,840. That leaves 30,000 shares. We discovered that Bertron, Storrs & Griscom got 7,462½ shares, Lee, Higginson got 5,000 shares, and this afternoon we have discussed how and where the 4,000 shares went.

. . .

[6771] By MR. HALL:

Q. You referred to two stock certificates, one for 18,840 shares and the other for 30,000 shares. Those two certificates, I believe, were issued to Susquehanna Contracting Company? A. Yes, as I understand it.

[6772] Q. Was the thirty thousand shares ever broken down? A. In the McCall Ferry Company stock certificate book?

Q. That is right. A. No, I don't think it was. The breakdown that would have been made of that would have been in the form of voting trust certificates issued by Harvey Fisk and Sons.

Q. Did you have the voting trust certificates? A. No, sir, we never had those.

Q. How did you break it down? A. The way I have described it, by finding out who wound up with it in their possession.

. . .

[6773] By MR. HALL:

Q. In other words, you never have found an answer to why Part 19 of Exhibit 27 refers to the consideration received under that contract as land cost whereas it in fact, according to you, included stock for distribution in part to

the syndicate members other than Hutchinson. A. No, I never particularly tried. I may have been curious about it. It didn't seem to me to be very important.

Q. Didn't you think that that fact had a bearing on the cash value of the stock?

[6774] THE WITNESS: It doesn't seem to me that what was or wasn't stated in the agreement, which is Item 19 in Exhibit 27, has any relationship at all to the valuation of the stock.

The only facts which have any relation to the valuation of the stock are a knowledge of those things for which those securities were ultimately used. And, as a matter of fact, we know that the consideration that passed in that agreement went for other things besides land. As a matter of fact, Hutchinson says it went to compensate him for several years of his effort where he advanced money which he used to [6775] hire engineers, hire lawyers, make surveys and lots of things of that nature.

By MR. HALL:

Q. The last part of your statement refers to the 18,840 shares retained by Hutchinson and not the 30,000 shares distributed to the other syndicate members? A. That is right, yes.

Q. Mr. Gunn, how much common and preferred stock did C. A. Coffin receive for his activities in connection with the Holtwood financing? A. He received 775 shares of preferred stock through Bertron, Griscom and Company.

Q. For what purpose? A. As five per cent of the amount of preferred stock that was to go with bonds subscribed to by himself and by people whose subscriptions he obtained.

Q. You mean he obtained subscriptions under the initial financing agreement which provided for a fifty per cent stock bonus? A. That is my understanding.

Q. And the 775 shares was the difference between fifty per cent and 45 per cent received under the second undertaking as to which the Fisk firm was banker? A. That is my understanding.

Q. ~~How~~ do you know that Coffin, Dimock and other [6776] syndicate members did not share in the stock which you have assigned to Harvey Fisk and Sons?

MR. KING: May we have the question?

(Question read.)

TRIAL EXAMINER: Is this preferred or common?

MR. HALL: To answer your question, Mr. Examiner, Harvey Fisk and Sons, according to Mr. Gunn, received both preferred and common stock. I had in mind how does he know that the individuals I named did not receive part of the preferred and common stock which he has assigned to Harvey Fisk and Sons.

THE WITNESS: I believe the principal evidence of that upon which I came to that conclusion for myself was Fisk's statement and Hutchinson's statement.

By MR. HALL:

Q. Isn't it a fact that you first determined the amount of stock which went to the syndicate members other than Harvey Fisk and Sons? A. That is one of the facts I determined.

Q. And didn't you assume that Harvey Fisk and Sons got all the stock which did not go to the other syndicate members? A. No, I don't think you can say that.

Q. Didn't you do that? A. No, sir. As I said before, I got together this [6777] information and gave it to Mr. Fisk and he is the man who drew that conclusion.

Q. At no place in this affidavit does he say, for instance, that Harvey Fisk and Sons received 17,000-plus shares of common stock. Isn't that so? A. We went over that this morning. The Fisk statement says what it says.

[6778] Q. He doesn't say his firm received 17,000-plus shares of common stock.

. . .

THE WITNESS: No, he expresses the opinion they probably did.

By MR. HALL:

Q. Then how did you arrive at the conclusion that they did receive 17,000-plus shares of common stock? A. On the basis of Fisk's opinion.

Q. Does Fisk anywhere in his affidavit, which is Part 9 [6779] of Exhibit 27, mention 17,000 shares of preferred stock in his answers to your questions? A. You mean common stock, don't you?

Q. Yes, common stock. A. Suppose I read what Fisk says? That is all there is to it.

Q. No, just answer my question, Mr. Gunn. A. Yes, he mentions he probably got 17,000 odd shares.

Q. Where is the figure 17,000 shown on Page 79 of Exhibit 27? A. It is the difference between 12,000 shares and 30,000 shares that Fisk talks about there.

Q. In other words, he gives you a minimum and maximum limitation? A. No, he says he probably received the difference between 12,000 and 30,000.

Q. Does "probably receive" mean to you that he actually received 17,000 shares of common? A. It means it is the only information I have on the subject.

. . .

[6781] MR. KING: If your Honor please, I would like the record to show Messrs. Wetzel, Bortner, Eichhorn and Chase are in the room and available for cross-examination. They have been available since Tuesday and will continue to be during the duration of the cross-examination.

MR. GOLDBERG: Will someone explain to counsel for the Staff how a witness who never has taken the stand

is available for cross-examination, and, if so, on what subjects?

Mr. KING: I would be delighted.

If your Honor please, in connection with the preparation of the original cost filing and reclassification, and in connection with the original cost testimony in this case in connection with Exhibits 25, 26 and 27, Mr. Eichhorn, Jr., who is a secretary and assistant treasurer of the company, assisted Mr. Gunn in connection with all accounting matters involved in those exhibits and in the reclassification.

Mr. Bortner, who is the right of way engineer and assistant secretary of the company, assisted Mr. Gunn on all matters relating to real estate.

I might say that subsequent to 1910, Mr. Gunn accepted Mr. Bortner's conclusion in connection with land matters.

Mr. Chase, who is civil engineer assigned to special studies, assisted Mr. Gunn in the determination of the date [6782] of beginning of commercial operation, in producing details in connection with the construction period, and on other problems involving engineering and technical decisions.

Mr. Wetzel, who is the budget engineer, assisted Mr. Gunn in connection with inventorying the property, compiling cost analysis, and reconciling those analyses with the inventory and similar matters.

Now, I might say that back at page 44 of the record Mr. Goldberg, for the first time, made the statement that with respect to the company's investment rate base it was the Staff's position that the gross investment for the rate base is, in round figures, \$32,920,738.

He further stated that in round numbers this is \$5,663,494 less than the company's book figure.

He then said, "The Staff proposes the elimination of the \$5,663,494 because the Staff contends that such

amount does not represent actual cost and should be disallowed.

"The Staff's evidence will, of course, develop the details of the elimination and the reasons therefor."

Now, those reasons were not placed in the record until Mr. Goldberg introduced Exhibit 51. We say they are not fully contained in Exhibit 51, but certainly prior to the time of filing Exhibit 51 the reasons for recommending the elimination of these various items were not known to the respondent.

[6783] Now, under those circumstances there was nothing which respondent could do except to proceed in its direct case to put in Exhibits 25, 26 and 27, because they had no knowledge of the Staff's position in connection with these various items.

The Company proceeded and put in the exhibits which I have mentioned. Then, subsequently, Exhibit 51 was placed in the record during the Staff's case in chief. Since that exhibit has been placed in the record we, of course, have attempted to study it and prepare to put in on rebuttal, and we submit it is proper rebuttal, our position in connection with the items recommended for elimination in Exhibit 51.

We now, therefore, offer the four witnesses to whom I have referred in connection with Mr. Gunn's cross-examination in regard to Exhibits 25, 26 and 27 simply because they assisted Mr. Gunn in connection with the preparation of those exhibits and have the details of the exhibits in mind as well as they can.

Mr. Goldberg has asked Mr. Gunn a number of questions.

MR. GOLDBERG: Mr. Hall has asked.

MR. KING: Mr. Hall has asked Mr. Gunn a number of questions which involved in some instances conferences between Mr. Gunn and the gentlemen who assisted him. That is one reason why I offer them for cross.

I think Mr. Goldberg has a perfect right to examine anyone [6784] with whom Mr. Gunn confers openly on the stand.

. . .

MR. GOLDBERG: I thought I could safely make that statement.

We have just been advised by counsel for the Respondents that there are four individuals in this hearing room who have assisted Mr. Gunn in the preparation of the original cost studies reflected in Exhibits 25, 26 and 27. The individuals referred to by Mr. King are as he indicated, Messrs. Eichhorn, Bortner, Chase and Wetzel.

There seems to be a confusion of ideas in Mr. King's statements. At one point we are told that they are available for rebuttal. At another point we are told they are available for cross-examination in connection with Exhibits 25, 26 and 27, and at another point we seem to be told they are available in combination with respect to support for Exhibits 25, 26 and 27, and in support of the inclusion in those exhibits certain exclusions proposed by Exhibit 51.

TRIAL EXAMINER: I don't think we need get into any discussion on that point.

[6785] MR. GOLDBERG: I am not going to get into any detailed discussion because I can probably go on for a long time if I did.

TRIAL EXAMINER: If you want to avail yourself of the offer of the Respondents' counsel you can. If you don't you don't have to so far as the Examiner is concerned.

MR. GOLDBERG: I am certainly delighted to have the Examiner state counsel for the Staff doesn't have to avail himself of the offer, because that statement means this:

Mr. Gunn, like other individuals, had assistance. Now, Mr. Gunn, despite that assistance, was the individual who was offered in this hearing as taking the ultimate responsibility for what he did.

Now, then, if Mr. Gunn is not in a position to take that ultimate responsibility, and we must turn to Messrs. Eichhorn, Bortner, Chase and Wetzel for the support in Exhibits 25, 26 and 27, then I say now, as I said the other day, that there has not been a proper foundation laid for the direct testimony of Mr. Gunn with respect to Exhibits 25, 26 and 27, and his testimony, if we are to avail ourselves of Messrs. Eichhorn, Bortner, Chase and Wetzel, must be stricken in its entirety, and the duty is incumbent upon the company to place——

TRIAL EXAMINER: This is no time for discussion of a motion to strike because counsel has gotten up and Respondents' [6786] counsel has stated Mr. Gunn had certain assistance.

Proceed with the examination of the witness.

MR. GOLDBERG: I think, Mr. Examiner, I am entitled to state on the record——

TRIAL EXAMINER: There is nothing at this point the Examiner wants to hear any discussion about.

[6789] By MR. HALL:

Q. Mr. Gunn, you indicated in your testimony yesterday afternoon that C. A. Coffin received 775 shares of preferred stock in connection with the sale of bonds. Did Mr. Coffin receive any of the 50,000 shares of common stock of McCall [6790] Ferry Power Company? A. Not so far as I know.

Q. Can you state it to be a fact that Mr. Coffin did not receive any part of the 50,000 shares of outstanding common stock of McCall Ferry Power Company? A. I

couldn't state that as a fact because he might have received some of Hutchinscn's allotment of stock. I don't know.

Q. There is also a possibility, is there not, that he might have received part of the shares of stock that you have assigned to Harvey Fisk and Sons? A. Not in my opinion. I believe that went to Fisk, Bertron and Lee, Higginson.

Q. Isn't it possible that Mr. Coffin shared in the distribution of common stock to Lee, Higginson and Company as well as Bertron, Storrs & Griscom? A. I don't think it is. Bertron's records, at least, show he kept his common stock. I also believe Lee, Higginson's records show the same thing as regards their 5,000 shares.

Q. What definite piece of evidence can you point to which will conclusively rule out the possibility that C. A. Coffin did not receive a portion of the stock distributed to one or all of the three firms, Harvey Fisk and Sons, Lee, Higginson and Company, and Bertron, Storrs & Griscom?

. . .

[6791] THE WITNESS: As regards Bertron, Storrs and Griscom, the evidence on which I based my opinion, the principal evidence, respecting where the stock went is contained in Part 22 of Exhibit 27, and is the fact that the stock that Bertron had he retained until the McCall Ferry Power Company was reorganized.

By MR. HALL:

Q. How much common stock did Bertron, Storrs & Griscom have recorded on their books? A. 7,462½ shares.

Q. Referring to Page 191 of Exhibit 27, it seems an entry was made on December 28, 1908 with a note to charge out. What does that mean? A. I assume that at that date they realized it had no value and they wrote it off.

Q. That is just an assumption on your part? A. It seems to me to be a pretty good assumption because [6792] they put a zero after value of it.

Q. It could have been a distribution, couldn't it? A. Not at that date. I don't think anybody would have wanted it. The stock already had lost its value at that time obviously.

Q. You still have not given me an answer to my over-all question, Mr. Gunn. You have referred to the over-all shares Bertron, Storrs and Griscom entered on their books. But that doesn't answer my question as to the evidence you can point to which will conclusively rule out the possibility that C. A. Coffin did not receive some portion of the common stock of McCall Ferry Power Company. A. You mean which Bertron had? Are you speaking now of this 7,642½ shares?

Q. That, and in addition I also have reference to the stock you have assigned to Harvey Fisk and Sons and Lee, Higginson and Company. A. Well, the evidence I have called your attention to is the evidence on which I relied in the case of Bertron, Storrs & Griscom. It is my understanding, it is my recollection, and we may have some evidence in the files on it although I am not sure, that the same situation existed with respect to Lee, Higginson, namely, that they kept their 5,000 shares themselves and distributed none of it.

Now, as regards Fisk, as I said, we never found Fisk's [6793] records.

Q. You mean that as Mr. Fisk states in his affidavit all of the Harvey Fisk and Sons' records were destroyed by fire? A. Yes, destroyed somehow as a result of his going out of the banking business. We never found his records and therefore the evidence, the only evidence I have, is the statement of Fisk plus the fact that Hutchinson says Fisk took over and dominated the proposition, and the statement of Fisk that he did take over and dominate it and that in his opinion he received the difference between the 30,000 shares certificate and the amount which went to Bertron, Storrs & Griscom for Bertron, Storrs & Griscom's own services and for the services of Lee, Higginson.

Q. Did Mr. Fisk, at the time of your conference with him, remember the number of shares of stock that were delivered to Bertron, Storrs & Griscom? Did you have to refresh Mr. Fisk's recollection by showing him some documents which were in the company's files? A. I think I probably showed him documents in the company's files. I didn't do it personally, but I supplied to Mr. Fisk's attorney, Mr. Cole, all of the information we had, that I had in my possession, from the company's files and other sources which had a bearing on Mr. Fisk's connection with the McCall Ferry enterprise.

[6794] Q. But Mr. Fisk had no independent recollection of the distribution of the common stock of McCall Ferry Power Company? A. That I can't say. I wasn't present when Mr. Cole discussed it with him.

Q. At least Mr. Fisk's statement shows that he did not contribute anything more than was already reflected in the documents in your possession? A. Oh, yes, he contributed a great deal more——

Q. I am speaking now only with respect to the distribution of the common stock. A. Nothing except his memory and opinion.

[6795] Q. Did Mr. Lee tell you that their records show that they received the 5,000 shares, received and retained the 5,000 shares of common stock of McCall Ferry Power Company? A. Mr. Lee told me this: That he received it, that it was their total compensation, and that when the company [6796] was reorganized they lost everything they had expected to receive for having obtained the subscriptions to the bonds. Now, from that I took it that he had kept the 5,000 shares of stock.

The correspondence between Bertron, Storrs & Griscom seems to me clearly to show that the 5,000 shares were going to Lee, Higginson for their services, and there is a distinction in the description of it made between the 5,000 shares of common stock and the shares of preferred stock

which were being transmitted to them for the purpose of making up the difference between 45 per cent of preferred stock and 50 per cent in the combination.

I might also say that part 11 of Exhibit 27 also pretty clearly indicates that there couldn't possibly have been any syndicate agreement, or whatever that agreement was we were talking about yesterday, because Lee, Higginson didn't even know how much stock they were going to get and had to write to Bertron and ask him.

It also pretty clearly indicates that Harvey Fisk was completely dominating the picture because Bertron couldn't give Lee, Higginson an answer and had to go to ask Harvey Fisk if they would give him some, which Harvey Fisk agreed to do.

. . .

[6798] By MR. HALL:

Q. Before going further with my present line of cross-examination, Mr. Gunn, do you have any list of common stockholders of McCall Ferry at any dates? A. Nothing more than stock certificate books and I believe a stock ledger or some sort of a record which was kept of it.

Q. But those records would not show you who the common [6799] stockholders were? A. No, I don't think they would.

Q. When do you say that the common stock was distributed to the bankers and the syndicate members? A. I have a little difficulty with that question, Mr. Hall. Are you making a distinction between the so-called bankers and syndicate members, or do you intend to put them both in there?

Q. I have reference to the distribution of the 30,000 shares. A. I see. I can't say precisely when the distribution was made. All I know is the date on which Bertron received their part of the 30,000 shares and the date on which they in turn gave Lee, Higginson their part.

As to when the stock may have gone into the possession of Fisk, I don't know. However, as I recall it the 30,000

shares were issued on a stock certificate to Susquehanna Contracting Company, which I take it had the effect of placing it in Fisk's hands. The stock certificate will show when that was. I think it can be looked up.

• • •

[6800] Q. Getting back now, Mr. Gunn, to my previous question with reference to the 4,000 shares of stock, preferred stock, which passed under the contract which is Part 19 of Exhibit 27, is it your statement that all but 1,875 of the 4,000 shares of preferred stock was used as additional bonus in connection with the sale of bonds? A. No, that is not my statement. I don't know.

Q. You don't know whether it was or not? A. No, I don't know any more than is given in Exhibit 27.

TRIAL EXAMINER: What page?

THE WITNESS: All through this, Mr. Examiner, in various sections.

TRIAL EXAMINER: Very well.

THE WITNESS: One of the things which causes the mystery about it, Mr. Hall, is this: Fisk says he got 1,875 shares, Bertron says he was entitled to 1,875 shares, and it appears that out of Bertron's 1,875 shares, plus, also, the shares to which Bertron was entitled for his firm's own subscription to bonds, that he supplied a certain amount of that to make up the five per cent to which the subscribers under the March 1st agreement were entitled. That is about the limit of my knowledge as to where that part of the preferred stock went.

[6801] By MR. HALL:

Q. Did you determine in your report, Mr. Gunn, that 1,875 shares of preferred stock were issued to Harvey Fisk and Sons for services? A. Yes, that is what Mr. Fisk says.

Q. Mr. Fisk's statement is the only basis you have for that? A. No. I believe we have the stock certificate

showing that. I believe the stock certificate book shows that.

Q. Are you saying that stock certificate book shows that there was issued to Harvey Fisk and Sons 1,875 shares of preferred stock? A. Yes, that is my recollection of what it shows.

Q. Does the stock certificate book indicate why the 1,875 shares of preferred stock were issued to Harvey Fisk and Sons? A. I don't think so. I wouldn't expect it to.

Q. Mr. Gunn, up to the time of the distribution of the common stock by Hutchinson for whom was it held? A. May I have the question, please?

(Question read.)

By MR. HALL:

Q. I have reference, Mr. Gunn, to the total of 48,840 shares. A. I suppose it was held for the people who were [6802] ultimately to get it.

Q. I show you, Mr. Gunn, a copy of a letter dated January 20, 1906, bearing the initials "PGB/MMB" addressed to Cary T. Hutchinson, Esq., 60 Wall Street, New York City.

MR. KING: May we look at the letter?

MR. HALL: Yes.

THE WITNESS: May I read it, please?

MR. HALL: Yes.

By MR. HALL:

Q. Are you familiar with that letter, Mr. Gunn? A. Yes, sir, I believe I have seen it.

Q. The initials "PGB" stand for Phillip G. Bartlett? A. Yes, sir, I believe they do.

[6803] MR. HALL: May we have this letter marked for identification as Exhibit No. 158?

TRIAL EXAMINER: Yes, the document may be marked.

(The document referred to was marked Exhibit No. 158 for Identification.)

. . .

[6804] By MR. HALL:

Q. According to Mr. Bartlett's letter, Mr. Gunn,—incidentally, Mr. Bartlett is connected with the firm of Simpson, Thacher and Bartlett— A. Yes, sir.

Q. —according to Mr. Bartlett's letter the stock, common stock of McCall Ferry Power Company, to the extent of 48,850 shares, was being held by Harvey Fisk and Sons for Mr. Hutchinson. Isn't that so? A. Yes, the letter so states. It is certainly evident Mr. Fisk had the stock in his possession.

The letter also states that Simpson, Thacher and Bartlett had furnished to Harvey Fisk and Sons "the list which you sent us for the distribution of your part of the common stock", which certainly indicates that all of the common stock was not for Hutchinson and that Hutchinson was not making the distribution of all of it.

[6805] Q. It definitely indicates that up until the date of this letter, January 20, 1906, Harvey Fisk and Sons were holding the 48,850 shares of common stock in safekeeping for Mr. Hutchinson? A. Yes, the letter states that.

Q. And the common stock was being held for Hutchinson by reason of the contract of June 14, 1905, between Hutchinson and Susquehanna Contracting Company. Right?

THE WITNESS: May I have the question, please?

(Question read.)

THE WITNESS: I don't know whether or not you could draw that conclusion. The letter says it was being held for Harvey Fisk and Sons.

By MR. HALL:

Q. For Hutchinson? A. Yes, for Hutchinson, by Harvey Fisk and Sons, and there is a contract of June 14,

1905 between Hutchinson and Susquehanna Contracting Company.

Incidentally, that also indicates to me the Susquehanna Contracting Company and Harvey Fisk and Sons were pretty near one and the same thing.

Q. What indicates that in Exhibit No. 158? A. The fact that Harvey Fisk and Sons had the stock and were holding it, but the contract was between Hutchinson and Susquehanna Contracting Company.

[6806] Q. If they were holding it for Mr. Hutchinson pursuant to the contract which is Part 19 of Exhibit 27, what is there about that which indicates an identity between Susquehanna Contracting Company and Harvey Fisk and Sons? A. The fact that Harvey Fisk and Sons had the stock.

Q. Would you say the same thing if Hutchinson had been holding the stock, that is that there was an identity of interest between Hutchinson and Susquehanna Contracting Company? A. Well, I wouldn't necessarily say that.

Q. Why not? A. For this reason: The fact that we have just mentioned is only one of a large number of facts that indicates the identity between Susquehanna Contracting Company and Fisk, and there are no facts whatsoever that indicate any identity between Hutchinson and Susquehanna Contracting Company.

MR. KING: May we have Mr. Hall's question read back? I think he inadvertently referred to identity between Hutchinson and Company when he meant—

MR. HALL: No, no.

MR. KING: You meant Hutchinson?

MR. HALL: Yes.

By MR. HALL:

Q. In reaching your conclusion as to identity of interest between Harvey Fisk and Sons and Susquehanna Contracting [6807] Company, had you relied in part upon the

letter which had been marked as Exhibit No. 158? A. That was unquestionably one of the facts. They were many, many facts, however, not the least of which was the fact that Susquehanna Contracting Company was run from Simpson, Thacher and Bartlett's office, and they were Fisk's attorneys.

Q. The Susquehanna— A. I don't know just what you mean by identity of interests, but I take it that you mean was substantially controlled by Hutchinson. If that is what you mean then my answer is correct.

MR. GOLDBERG: Did you mean "Hutchinson" in your last answer?

THE WITNESS: No, I meant Fisk, Harvey Fisk and Sons.

By MR. HALL:

Q. What do you mean by substantially controlled, Mr. Gunn? A. Just that. In other words, that the actions of Susquehanna Contracting Company would be subject to Fisk's dictation.

[6808] By MR. HALL:

Q. Mr. Gunn, the Susquehanna Contracting Company contract which we have been discussing, Part 19 of Exhibit 27, called not only for the 48,840 shares of common stock to [6809] be delivered to Hutchinson but also for the delivery of 4,000 shares of preferred stock and 750 thousand dollars in cash. Is that right? A. Yes, sir.

Q. Isn't it clear from Exhibit No. 158 that if there was a distribution of the common stock it occurred subsequent to January 20, 1906? A. Yes, I believe Exhibit 158 indicates that, at least.

Q. I notice that the letter, Exhibit 158, refers to 48,850 shares, making ten shares difference.

Now, the ten shares represents the incorporators' shares. Is that right? A. I would assume that it does, although I don't know, of course.

Q. And according to Exhibit 158 the incorporators' shares were delivered to Hutchinson, or were being held for Hutchinson? A. No. Well, Exhibit 158 is a little ambiguous on that point. The first paragraph indicates to me that Hutchinson had previous to this letter sent to Simpson, Thacher and Bartlett, and they had in turn delivered to Harvey Fisk and Sons, a list of people to whom he was going to distribute his share only of the 48,850 shares, and the second paragraph of the letter says that the whole 48,850 shares was being held for Hutchinson, so it seems to me that [6810] the Exhibit 158 is clearly ambiguous on the face of it.

Q. I don't have as much difficulty with that letter as you seem to have, Mr. Gunn.

Was the entire 48,850 shares of common stock placed in a voting trust? A. It was supposed to be, and I assume it was.

Q. Do you know it to be a fact that it was? A. No, I never did find the voting trust records.

Q. In other words, you don't know how many shares of stock were actually placed in the voting trust? A. No, I assume they all were, but I don't recall I have any positive proof of it for the reason I couldn't find the voting trust records. As a matter of fact, I don't know of any other way they could have distributed the stock, and I don't know of any other reason for writing this letter at this time contemplating a distribution except in the form of voting trust certificates.

Q. Does this letter, Exhibit No. 158, refer to voting trust or voting trust certificates? A. No, but it refers to a distribution of the stock and it was not distributed through McCall Ferry certificates so far as I know, so it must have been distributed through voting trust certificates.

Q. That is purely and simply an assumption on your part? [6811] A. I think it is a lot more than an assumption. It seems to me it is. It seems to me to be more than—

Q. Was there a voting trust created? A. It is my understanding that there was.

Q. What is the date of that voting trust? A. The date of the stock deposit agreement in the voting trust was January 20, 1906.

Q. Is that voting trust agreement Part 20 of Exhibit 27? A. Yes, sir.

Q. I believe you have indicated you do not know what stockholders became parties to the voting trust agreement. A. I assume they all did. I have no reason for supposing they didn't.

Q. Can you state it to be a fact they all did become parties to the voting trust agreement?

THE WITNESS: May I have the question, please?

(Question read.)

THE WITNESS: No, I cannot state it to be a fact from the information I have before me now.

By MR. HALL:

Q. Who were the voting trustees under the voting trust agreement, Mr. Gunn? A. Mr. Henry F. Dimock, Mr. William F. Barnum, and Mr. S. Reading Bertron.

[6812] Q. To whom were the voting trust certificates issued? A. I suppose to the beneficial owners of the stock ultimately.

Q. You do not know who deposited their stock in the first place? A. No.

Q. Accordingly you do not know to whom voting trust certificates were issued. Is that right? A. No.

Q. In other words, you agree with my last statement? A. Yes, I agree with your last statement.

Q. It appears from Bertron, Storrs and Griscom Company Incorporated letter dated May 27, 1938, which is included in part 22 of Exhibit 27, that that firm did not record the receipt of either preferred or common stock until November 21, 1906. Is that right?

THE WITNESS: May I have the question, please?

(Question read.)

THE WITNESS: That is correct. It so appears from that letter.

By MR. HALL:

Q. In other words, the stock was recorded in the books of that firm approximately ten months after the voting trust was created? A. Yes, it so appears.

[6813] Q. Did the other syndicate participants receive their stock on the same date, that is November 21, 1906?

A. We haven't discovered yet who the other syndicate participants are. Lee, Higginson received theirs at a somewhat later date. We don't know when Harvey Fisk and Sons received theirs.

Q. Who were the members of the syndicate after Fisk came into the financing picture about the middle of March, 1905, Mr. Gunn? A. Mr. Hall, you have to tell me what "the syndicate" is.

Q. Do you know? A. No. I know who the syndicate managers were.

Q. Is that all you know about who composed the syndicate? A. I think I might know more if you tell me what you mean by "syndicate."

Q. I mean the members who associated themselves together for the purpose of financing the project in connection with Harvey Fisk and Sons' participation. A. Well, Harvey Fisk and Sons were the bankers, and Mr. Fisk says that Bertron, Storrs and Griscom were in joint account with him as a banker, or joint banker, I guess you would call it. Lee, Higginson was acting apparently under Bertron, Storrs and Griscom.

You might call those the syndicate, I believe are the words [6814] you used, or you might call the syndicate anybody that bought any bonds. I don't know what you mean. I really don't know what you mean by syndicate.

Q. Mr. Gunn, will you refer to the bottom of page 21 and the top of page 22 of Exhibit 26? A. Yes, sir.

Q. You there state, "This estimate was based upon Harvey Fisk and Sons acting as syndicate managers and actually selling approximately one-half of the eight million dollars bond issue."

What did you mean when you referred to "syndicate managers"? A. That is taken from Mr. Fisk's statement.

Q. What did Mr. Fisk mean? A. I don't know. I would assume he probably meant—well, I just don't know what he meant and never have known. No use guessing at it.

Q. Did you ever ask Mr. Fisk what he meant by that statement? A. No, sir.

Q. With reference to this matter? A. No, sir. As I told you, the information was secured from Mr. Fisk by Mr. Fisk's counsel at my request. I didn't have an extended discussion with Mr. Fisk except on one occasion.

[6815] Q. Mr. Gunn, what did you refer to at the top of page 21, Exhibit 26, when you said "New syndicate"?

THE WITNESS: May I have the question, please?

(Question read.)

THE WITNESS: That statement was taken verbatim from Part 1 in Exhibit 27 and they are the words Mr. Hutchinson used to describe the Fisk arrangement for the new financing.

By MR. HALL:

Q. What page are you now referring to in Exhibit 27? A. Page 6. I am referring to about the fifth or sixth line down from the top.

Q. Who was, or who were the new syndicate members that Hutchinson referred to? A. I don't know.

Q. Did you ever ask Hutchinson the names of the individuals comprising the new syndicate? A. I don't recall whether or not I did. I think this is probably the reason why I may not have: The work that I had done, which ultimately became Exhibit 26, prior to the time I first saw Hutchinson I had supposed, and I had arrived at that con-

clusion from a study of the documents in Exhibit 27 without the benefit of these people who were involved in it, I had arrived at the conclusion that the financing or the development of McCall Ferry was being done more or less in a cooperative manner by a group of people. However, [6816] the first time I saw Hutchinson he explained to me that that was not the case at all, that under the first attempt to underwrite the agreement that he had understood that he would have control of it, that when that underwriting failed Harvey Fisk and Sons took control from him, and after that he said that Harvey Fisk and Sons ruled the corporation in their own fashion without too much help from him.

Q. What has that to do with who made up the individuals who composed the new syndicate? A. I understood that Harvey Fisk had done the whole thing.

Q. You know that isn't so, though, don't you, Mr. Gunn? A. I know it now to be sure, yes.

Q. In other words, what Mr. Hutchinson was telling you was not exactly in accord with the facts? A. Oh, yes it was. What Mr. Hutchinson told me was that Fisk took control of the enterprise from him, and it certainly to me is obvious that Fisk did.

Q. Who are the members of the new syndicate referred to by Mr. Hutchinson? A. I don't know.

Q. You never asked him? A. Not that I recall.

Q. Mr. Gunn, as shown in lines 17 through 22 of the [6817] transcript on page 6583, you stated that you submitted a portion of Exhibit 26 to Fisk, Hutchinson and Hopkins. Do you still have the portions of Exhibit 26 that you submitted to those individuals? A. Yes, I told you that on preliminary cross-examination, and that they were available if you wanted to look at them.

Q. Will you please make them available at the first opportunity? A. They have been available for six months.

Q. Where? A. In the company's files, and you have had auditors there who have had time to look at them if they wished.

Q. Do you think you could have the portions to which I referred here on Monday? A. Yes, sir, I think I could.

Q. Do you know why the distribution of the stock of McCall Ferry Power Company was deferred to November, 1906?

TRIAL EXAMINER: Read that question, please.

(Question read.)

THE WITNESS: No, I do not.

By MR. HALL:

Q. Who held the stock prior to its distribution in November of 1906? A. I don't know; at least I don't recall now.

[6818] By MR. HALL:

Q. Mr. Gunn, you have referred to Messrs. Dimock, Barnum and Bertron as being the trustees under the voting trust agreement? A. Yes.

Q. Barnum was Fisk's partner. Is that right? A. Yes, sir.

Q. Bertron was Dimock's banker associate? A. Not that I know of.

Q. Bertron, Dimock, maybe one or two others, were associated together in connection with the initial financing before Harvey Fisk came into the picture?

THE WITNESS: May I have that question, please?

(Question read.)

THE WITNESS: They were both in it. I don't know how they were associated. But Dimock was Hutchinson's father-in-law, and Bertron, as I understand it, was the man to whom Dimock took the proposition to get it financed.

[6819] By MR. HALL:

Q. Bertron, Hutchinson and Dimock were all associated together in connection with the initial financing? A. They were all there. I don't know what the association was.

Q. And participated in the initial financing, at least in the attempt to finance the project? A. I don't know about that. I don't know of any participating in it that Hutchinson did. You mean by "participating" that they were all out attempting to obtain subscribers? Is that what you are referring to?

Q. They were all engaged in the financing of the project? A. I don't know what Hutchinson had to do with the financing of it.

Q. I am referring to Dimock, Mr. Gunn. A. I still don't know precisely what part Dimock played in the financing.

Q. He was one of the syndicate members. Is that right? Mr. Dimock was one of the syndicate managers under the original financing as reflected in part 5 of Exhibit 27? A. Yes, sir, he was.

Q. And was associated with Bertron in that financing attempt? A. In that capacity he was associated apparently.

[6820] Q. As a matter of fact, Mr. Gunn, in your report, particularly on page 19 of Exhibit 26, you refer to the failure of the "Dimock, Bertron, Barney underwriting"? A. What I meant by that was that that was simply a terminology used to distinguish it from Fisk, and relating it to the fact those three men were—

Q. Managers under the initial agreement? A. Yes, were managers under the initial agreement.

Q. How long did the voting trust continue in effect? A. You are speaking now of Harvey Fisk and Sons' voting trust?

Q. I am speaking now of the voting trust agreement that was created on January 20, 1906, and referred to in the agreement which is part 20 of Exhibit 27. A. According to the stock deposit agreement on which the voting trust was created it was to continue in effect until November 1, 1908, or until the plant of McCall Ferry Power Company should be completed and put into actual operation if prior to that date.

Q. How long did it actually continue in effect? A. I don't know what became of it. I don't suppose there was any use for its continuing after the reorganization of the company.

Q. When did that occur? A. I am not lawyer enough to say which one of these [6821] dates it occurred on.

The bondholders committee sent out a notice of the impending default on December 7, 1908. McCall Ferry actually defaulted on December 15, 1908. The suit for foreclosure instituted by Knickerbocker Trust Company was on July 13, 1909.

Aldred was appointed Receiver on the 17th.

McCall Ferry Power Company was reorganized into Pennsylvania Water and Power Company on January 13, 1910. I don't know which one of those you would call the particular date on which you referred to.

Q. Do I correctly understand you to say that you have no information which will definitely fix the date of termination of the voting trust agreement? A. That is correct.

Q. Did an executive committee carry on the active direction of McCall Ferry affairs from August 8, 1905, to 1909?

THE WITNESS: May I have the question, please?

(Question read.)

THE WITNESS: I don't believe I understand what you mean by active direction, Mr. Hall.

By MR. HALL:

Q. Who carried on—withdraw that.

McCall Ferry Power Company had an executive committee? [6822] A. I understand they did, yes.

Q. Which committee exercised most of the functions of the board of directors between meetings of the board of directors? A. Yes, it is my understanding that was its function.

Q. Who were the members of that executive committee?

. . .

THE WITNESS: H. F. Dimock, C. A. Coffin, Gardiner M. Lane, William M. Barnum, William Barclay Parsons.

By MR. HALL:

Q. Did Mr. Bertron replace Mr. Lane in September, 1905, on the executive committee? A. I don't have the information before me which would indicate whether he did or not.

[6823] Q. Mr. Gunn, my information is that Gardiner M. Lane resigned on September 20, 1905, and that he was replaced on the same date by Mr. Bertron. Will you check that information, please? A. Yes, sir.

Q. Mr. Parsons was Mr. Hutchinson's consulting engineer. Is that right? A. Mr. Parsons was a consulting engineer and had previously done some work in association with Hutchinson.

Q. Didn't Mr. Hutchinson bring Parsons in as his consulting engineer after Mr. Morison's death? A. As I recall he did. He came in some time prior to the date—

Q. January 13, 1905? A. Yes, date of the prospectus, which is—may I have the question again, please?

(Question read.)

THE WITNESS: Yes, Parsons was employed by Hutchinson some time prior to January 13, 1905, which is the date of Parson's report which became a part of the prospectus.

By MR. HALL:

Q. And he was employed by Hutchinson as his consulting engineer? A. That is my understanding.

Q. Mr. Coffin was associated with Mr. Hutchinson as [6824] early as 1903. Is that right? A. He may have been. I don't recall offhand.

Q. So far as you know? A. So far as I know he may well have been.

Q. Wasn't Hutchinson at one time connected with General Electric Company? A. Yes, sir, Mr. Hutchinson says in his affidavit he was once connected with General Electric Company. That is shown at the bottom of Page 3.

Q. Was Mr. Coffin also connected with General Electric during the period from 1903 to 1905? A. Yes, sir, I think so.

Q. There is no question about that, is there? A. I don't think so.

Q. Is it reasonable to assume that is how the project came to Coffin's attention, through Hutchinson? A. No, I wouldn't say that would be a reasonable assumption.

Q. They were both in the same company and the record shows they were both interested in the construction of the project? A. Yes, but there were other people interested in the development of hydro-electric power on the Susquehanna River long before Hutchinson was, and some of them may very well have called Coffin's attention to it.

[6825] Q. Who do you refer to now? A. James H. Harlow for one.

Q. Was Mr. Harlow connected with General Electric? A. Certainly not, but General Electric Company was well-aware, and kept well-abreast, of all hydro-electric potentialities at that time.

Q. And it is reasonable to assume C. A. Coffin came into contact with Mr. Hutchinson in that connection? A. He may very well have. I have no idea when Mr. Coffin first came into contact with Hutchinson. It may well have been long before 1903 so far as I know, and it probably was.

Q. In Exhibit 26 you state that with the advent of Harvey Fisk and Sons in the picture control passed from Hutchinson to the Fisk firm. What basis do you have for that statement? A. The fact that Mr. Hutchinson says that is what happened, that up to his death he was very bitter over it, and the fact that Fisk says that is what happened, plus all of the direct and indirect indications of that included in Exhibit 26 and Exhibit 27.

Q. Can you be more specific about the direct and indirect evidence that you refer to, Mr. Gunn? A. I don't know whether I can or not. One of the pieces of evidence

I had in mind was the fact that when Harvey [6826] Fisk and Sons came into the picture they kicked out the former law firm that had been doing the company's work, and Harvey Fisk's domination of the firm was so well-known that when Harlow-McGaw wanted to get out from under their water power rights they knew they had to go to Harvey Fisk and Sons to do it. Those are a couple of the items. There are undoubtedly others.

Q. Isn't the reason Harlow-McGaw went to Fisk that Fisk was named in the prospectus as bankers? A. That is also another indication that Harvey Fisk and Sons dominated it.

Q. Isn't it reasonable to assume that because they were named as bankers that is the reason they went to Fisk? A. No, not necessarily. If Hutchinson was such an important figure in it, Harlow and McGaw both personally knew Hutchinson well. It looks to me like they more likely would have gone to Hutchinson.

Q. And Harlow-McGaw had had differences with Hutchinson. Isn't that so? A. Oh, but they had been composed.

Q. What did they do that indicated that their differences had been composed? A. The fact that Harlow and McGaw withdrew their opposition to Hutchinson in McCall Ferry Power Company and entered into an agreement with him.

Q. Mr. Gunn, before you conferred with Pliny Fisk had [6827] you concluded that there was this control by the Fisk firm? A. May I have the question, please?

(Question read.)

THE WITNESS: I don't remember, Mr. Hall, and my difficulty is this: The statement I obtained from Hutchinson was dated January 14, 1939, and the statement I obtained from Fisk was dated December 29, 1938.

Now, I had had discussions with Hutchinson, as I recall, over a period of something like a year, and it was dur-

ing the first discussion that I had with Hutchinson that he told me that Fisk had deprived him of control of the McCall project.

Now, the one discussion I did have with Mr. Fisk personally took place some considerable period of time before December 29, 1938, and I don't recall whether that conversation with Fisk was before my first conversation with Hutchinson or not. My first knowledge of that situation came with either Fisk or Hutchinson, whichever I talked to first.

By MR. HALL:

Q. Prior to your first discussion with Hutchinson had you reached the conclusion that Harvey Fisk and Sons had deprived Hutchinson of control? A. I had Hutchinson's statement to that effect.

Q. Prior to Hutchinson's statement had you reached that same conclusion? A. No, not unless I had talked to Fisk first. I think [6828] I can answer the question perhaps clearly this way: Prior to the time I talked to Fisk or Hutchinson I did not know of that control situation.

Q. So that no evidence in your possession prior to your discussion with Fisk and Hutchinson enabled you to reach the conclusion that Fisk had deprived Hutchinson of control about the middle of March, 1905? A. May I have that question, please?

(Question read.)

[6829] THE WITNESS: No, that is not a correct conclusion for this reason, Mr. Hall: I had a lot of information in my possession which served the sole purpose of confusing me and making it impossible for me to put the various pieces together so as to make a consistent story.

After I talked to Fisk and Hutchinson and found out of this arrangement I could then put together the pieces of information I had and they then fitted into the pattern that Fisk and Hutchinson had given me in their statements, and for the first time made it possible for me to come to

what seemed to me to be a reasonably rational conclusion as to what was the story of the development of McCall Ferry.

By MR. HALL:

Q. Mr. Gunn, will you specify the pieces of information that enabled you to conclude finally that Harvey Fisk and Sons did deprive Hutchinson of control in March of 1905?

A. I can't specify them in any more detail than simply to say that they are all the pertinent parts of Exhibits 26 and 27.

Q. Will you specify the pieces of evidence which enabled you to confirm the statements which Fisk and Hutchinson made to you—

A. I mentioned—

Q. —that you had had prior to your conferences with Hutchinson and Fisk?

[6830] THE WITNESS: May I have that, please?

(Question read.)

THE WITNESS: One piece I can think of offhand is the March 25 underwriting agreement.

By MR. HALL:

Q. Is that the only one? A. No, I don't think so.

Q. What other? A. I can't recall it all. They are included in Exhibits 26 and 27.

Q. Name some others. A. Well, I think prior to that conversation I had known that Harlow-McGaw approached Fisk for the sale of their property. I think also I had known that Simpson, Thacher and Bartlett had replaced Couderet Brothers as lawyers. I can think of those matters offhand.

However, I will say this: That just those three items standing alone are not all that there is to offer that confirmation. The whole of Exhibit 26 and Exhibit 27 seems to me to bear that out.

Q. Every bit of them? A. All the pertinent parts.

Q. What are the pertinent parts as to this question of